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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Haiti

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report prepared by Professor Marco Tulio Bruni Celli (Venezuela), Special Rapporteur of the Commission on Human Rights on the situation of human rights in Haiti, in accordance with paragraph 11 of Commission on Human Rights resolution 1993/68 of 10 March 1993 and Economic and Social Council decision 1993/276 of 28 July 1993.

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Annex

PROVISIONAL REPORT ON THE SITUATION OF HUMAN RIGHTS IN HAITI SUBMITTED BY THE SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS PURSUANT TO COMMISSION RESOLUTION 1993/68 AND ECONOMIC AND SOCIAL COUNCIL DECISION 1993/276

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I. INTRODUCTION

A. Mandate of the Special Rapporteur

1. At its forty-ninth session, the Commission on Human Rights considered the report of the Special Rapporteur (E/CN.4/1993/47) and, on 10 March 1993, adopted without a vote resolution 1993/68 on the situation of human rights in Haiti, in which it decided to extend for a further year the mandate of the Special Rapporteur, who was requested to submit an interim report to the General Assembly at its forty-eighth session and a final report to the Commission on Human Rights at its fiftieth session. The Commission also decided to consider the situation of human rights in Haiti under the agenda item "Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories".

2. The recommendations and measures approved by the Commission in its resolution 1993/68 guided the Special Rapporteur in his investigations and in the preparation of this report on the situation of human rights in Haiti. For technical reasons this report was finalized on 14 October 1993; any relevant additional information will be reflected in the Special Rapporteur's oral presentation to the Third Committee.

B. Earlier work by independent experts and by the Special Rapporteur

3. The situation of human rights in Haiti in recent years has been discussed and described in reports by the independent experts and Special Rapporteur appointed by the Commission. In addition to presenting information on the continued violations of human rights, the reports have also pointed to the social, economic, cultural and political problems in Haitian society that have particularly hindered the development of the democratic process and basic democratic institutions and, consequently, respect for human rights and fundamental freedoms.

4. The reports received and considered by the Commission on Human Rights during the period 1981-1986 were summarized in the report which the Special Rapporteur submitted to the Commission at its forty-third session, in 1987 (E/CN.4/1987/61). In addition to synthesizing previous reports, this report provided an overview of economic and social conditions in Haiti and the human rights situation in general as well as an analysis of relevant institutional aspects such as the constitutional system, legislation, the prison system and the administration of justice.

5. From 1988 to 1991, the reports submitted to the Commission dealt with the general situation in Haiti, particularly the political instability which followed the end of the Duvalier regime in 1986, problems in the establishment and functioning of democratic institutions, and the socio-political environment surrounding the grave human rights situation which has prevailed since then. The reports denounced the suppression and arbitrary suspension of fundamental civil rights, particularly the freedoms of expression, opinion, press and

assembly as well as trade union freedoms and guarantees. They also discussed the frequent instances of arrests without formal charges or due process. Also analysed were rural and urban violence; the deplorable prison conditions, systematic torture and ill treatment; the denial of political rights; and, in general, continued violations of the rights enunciated in the Haitian Constitution and in the human rights declarations and treaties to which Haiti is a party.

6. The report which the Special Rapporteur submitted to the Commission at its forty-eighth session in his capacity as independent expert (E/CN.4/1993/50 and Add.1) provided a detailed account of the country's history and analysed its political, social and economic characteristics. The report also gave an overview of the situation in Haiti during 1991 which included criticisms both of the situation under President Aristide's Government beginning in February and of the situation following the coup d'état on 29 September of that year. One chapter was devoted to the legal background and institutional aspects of human rights. Special emphasis was placed on external cooperation and the international community's efforts to restore democracy.

7. The report which the Special Rapporteur submitted to the Commission at its forty-ninth session (E/CN.4/1993/47) reviewed the principal human rights violations in Haiti in 1992, with special emphasis on: repression and violence; violation of the right to life, liberty and security of person; violation of the right to protection against arbitrary arrest and detention and against torture and other cruel, inhuman or degrading treatment; and violation of the right to freedom of opinion and expression and the right to freedom of assembly and association. A special chapter was devoted to the situation of the boat people and another to institutional obstacles to the protection of and respect for human rights, and a description and detailed analysis was provided of the negotiations which had been launched in Haiti largely as a result of pressure by the international community and certain individual countries with a view to the restoration of democracy and the reinstatement of Aristide as President of the Republic.

C. Appointment of Marco Tullio Bruni Celli as Special Rapporteur

8. At its forty-ninth session, the Commission on Human Rights extended Mr. Bruni Celli's mandate as Special Rapporteur for a further year. The Economic and Social Council confirmed this appointment in its decision 1993/276 of 28 July 1993. Mr. Bruni Celli accepted the appointment with pleasure and pledged to carry out the task entrusted to him.

D. Activities of the Special Rapporteur under his mandate

9. In carrying out his mandate the Special Rapporteur enjoyed valuable cooperation from the United Nations Centre for Human Rights. The Special Rapporteur also received valuable assistance from the Inter-American Commission on Human Rights (IACHR), particularly from its Executive Secretary, Ambassador Edith Márquez Rodríguez, and from Ms. Bertha Santoscoy Noro, chief

specialist for Haitian affairs, and Ms. Meredith Caplan, attorney for the Commission.

10. In the course of his work, the Special Rapporteur held talks in July 1993 with the directors and staff of the Centre for Human Rights. There he began to prepare his report.

11. The Special Rapporteur decided to travel to Washington, New York and Haiti in order to talk to senior officials of the United Nations and the Organization of American States (OAS) working with the Haitian crisis, and with the participants themselves in order to familiarize himself with the details of the political negotiations aimed at resolving the crisis and to learn about the situation of human rights in Haiti firsthand. The Executive Office of the Secretary-General advised the Special Rapporteur to postpone his visit until after the Government of the Prime Minister-designate, Mr. Robert Malval, had taken office. The Special Rapporteur agreed to do so, although he was in fact scheduled to visit Haiti from 23 to 27 August 1993 in his capacity as a member of the Inter-American Commission on Human Rights, which had already planned a visit. The Centre for Human Rights drew up the programme and made the necessary logistical arrangements for the visits to Washington and New York, while IACHR did the same for the visit to Haiti.

12. The Special Rapporteur travelled to Washington on 13 August 1993. He met with the Executive Secretary of IACHR and members of her staff, who provided him with much information and documentation regarding the situation in Haiti. On 16 and 17 August he met individually with Ambassadors Guido Groscoors of Venezuela, Jean-Paul Huber of Canada, Jean Casimir of Haiti, Antoine Blanca of France and Harriet Babbitt of the United States of America, all of whom are the permanent representatives of their respective countries to the OAS. He also met with Mr. John Shattuck, Secretary of State for Human Rights and Humanitarian Affairs of the United States of America; Ambassador Lawrence Pezzullo, the United States Government's Special Adviser on Haitian Affairs; and Mr. Richard Miller, Director of the Democracy and Human Rights Office of the International Organizations Section of the Department of State. With all of them he discussed the negotiations in progress, the agreements reached, possibilities and problems relating to their implementation, and the programmes to be launched in Haiti for the safeguarding, promotion and respect of human rights.

13. During his visit to Washington, the Special Rapporteur was able to meet on 16 August with President Jean-Bertrand Aristide, at which time the President gave his own assessment of the situation in Haiti and his views and opinions regarding the negotiations, the agreements reached and their implementation and prospects; in particular, he set out the highlights of his programme for reconstruction and national unity.

14. Unfortunately, the Special Rapporteur was unable to meet with Ambassador João Clemente Baena Soares, Secretary-General of OAS, as the latter was away from Washington at the time.

15. In New York the Special Rapporteur spoke to senior officials of the United Nations and representatives of non-governmental organizations. On 19 August he met individually with the Special Envoy of the Secretary-General of the United Nations and of the Secretary-General of OAS, Mr. Dante Caputo, and the Senior

Adviser to the Secretary-General of the United Nations for Political Affairs. On the same day he met also with Mr. Robert O. Weiner, coordinator of programmes for Latin America and the Caribbean of the Lawyers Committee for Human Rights, and with Ms. Candy Wittam, that organization's liaison officer to the United Nations. He met also with Ms. Mary Jane Camejo of Americas Watch. On 19 August he met with Mr. Jocelyn McCalla, Director of the New York office of the National Coalition for Haitian Refugees.

16. During his visit to New York, the Special Rapporteur was also able to obtain documentation on the human rights situation in Haiti from the Centre for Human Rights liaison office and from various non-governmental organizations.

17. The Special Rapporteur travelled to Haiti on 22 August 1993. As in the past, he made this visit in his capacity as a member of the Inter-American Commission on Human Rights. There he met with the members of the International Civilian Mission. He also met with Father Antoine Adrien and Mr. Jean-Baptiste Chavannes, members of the Presidential Negotiating Commission appointed by President Aristide.

18. On 23 August the Special Rapporteur and the other members of the Inter-American Commission on Human Rights attended a protocol meeting with the de facto Minister for Foreign Affairs, Mr. François Benoît.

19. Also on 23 August the Special Rapporteur held talks at Port-au-Prince with representatives of the leading human rights non-governmental organizations in Haiti: Mr. Necker Dessables, Mr. Paul Dejean and Mr. Jean-Claude Jean of La Plateforme; Mrs. Gladis Joseph of Sant Karl Levek (Centre Karl Leveque); Ms. Georgette Senatus of the Comité des avocats haïtiens; Mr. Jean-Claude Bajeux, Mr. Jean Robert Vaval and Mr. Jean Robert Benoît of Centre oecuménique des droits humains; Mrs. Ann Fuller and Mr. Pierre Esperance of the National Coalition for Haitian Refugees; Mr. Jean Joseph Exumé, Legal Counsel; Mr. Joseph Polycarpe, Mrs. Marcel Hilaire and Father Hugo Trieste of the Commission de justice et paix; and Mrs. Jessie Ewald Benoît of Agence du développement économique intégré et Commission des droits humains. With all of these he reviewed the situation of human rights in the country, particularly information substantiating actual violations in Port-au-Prince as well as in the country's other cities and in rural areas.

20. On 24 August the Special Rapporteur met with General Raoul Cédras, Commander-in-Chief of the Haitian Armed Forces, who was accompanied by the eight colonels who make up the High Command, with whom he discussed the political crisis and, in particular, the human rights situation in the country and the role of the military. He also had talks with Mr. Jean-Louis Firmin, President of the Senate, and Senators Turneb Delpé and Rony Mondestin. That afternoon he met with the following representatives of the mass media: Mrs. Yolette Mengual and Mr. Evariste P. Michel of Radio Arc-en-Ciel; Mr. Jean Germain Alexandre and Mr. Patrick Mousignac of Radio Caraïbes; Mr. Even Dubois of the newspaper Le Nouvelliste; and Mr. Jean Marie Dorsainville of Radio Soleil. He met also with Mr. Antoine Izméry and Father Ivon Massak, representatives of the Komité de Liberté (KOMEVEB) and with the following representatives of Haitian trade unions: Mr. Jean Claude Lebrun and Mr. Marc Antoine Destry of the Confédération des travailleurs haïtiens (CTH); Mr. Gesner Jean-Philippe of the Organisation générale indépendante des travailleurs et travailleuses d'Haïti (OGITH);

Mr. Gabriel Miracle, Mr. Raymond Viueu and Mr. Gesner Milcent of the Centrale autonome des travailleurs haïtiens (CTTH); and Mr. Joseph Lefils and Mr. Deceus Louisius of the Fédération des ouvriers syndiqués (FOS).

21. On 25 August he travelled to Saint-Marc and Gonaïves. At Saint-Marc he visited one of the offices of the International Civilian Mission and met with two of its members, Mr. Alejandro Carnero and Mr. Gustavo Cortez; he also visited the Saint-Marc prison and met with the captain in command of the military barracks. In Gonaïves he met with Bishop Gérard Dormeril (of CARITAS) and spoke to recent victims of human rights violations, who provided him with firsthand testimony of the severe and ongoing military repression in the area.

22. On 26 August the Special Rapporteur met with Prime Minister Robert Malval at his residence. He also met that day with Mrs. Huddleston, chargé d'affaires at the Embassy of the United States of America, and Miss Ellen Cosgrave, a member of the United States Foreign Service in Port-au-Prince. He met also with representatives of some of the major political parties: Mr. Victor Benoît, Mr. Evans Paul and Mr. Turneb Delpé of the Front national pour le changement et la démocratie (FNCD) and the Comité national du Congrès des mouvements démocratiques (KONAKOM); Mr. George Pierre-Charles George of the Lavalas movement; Mr. René Théodore of the Mouvement pour la reconstruction nationale (MRN); Mr. Reynols Georges of the Alliance pour la libération et avancement d'Haïti (ALAH); and Mr. Leslie Manigat, former President of the Republic and Secretary-General of the Rassemblement des démocrates nationaux progressistes (RDNP).

II. ECONOMIC AND SOCIAL SITUATION

23. Haiti is the poorest and most densely populated country in the western hemisphere, and one of the poorest in the world. Two thirds of its population is below the poverty level and it ranks 124th in the list of the 160 least developed countries. In 1991, Haiti had a per capita gross domestic product (GDP) of $360, life expectancy of 55 years, an unemployment rate of more than 50 per cent and an annual demographic growth rate of 2.1 per cent, despite a very high rate of infant mortality. 1/

24. Haiti's severe poverty has had a major impact on the Haitian population's enjoyment of economic, social and cultural rights. Unemployment, hazardous and insanitary housing, illiteracy, morbidity and mortality have combined to create virtually subhuman living conditions. 1/

25. In 1991, only 60 per cent of the Haitian population reportedly had access to health-care services. According to information received by the Special Rapporteur, there is an average of 1.7 physicians and 1.3 nurses in the public sector for each 10,000 population. Furthermore, most of the health personnel reside in the western part of the country, particularly Port-au-Prince, leaving the provinces with little if any access to health care. With regard to physicians in the private sector, the majority are said to charge fees which are prohibitively high for most Haitians. 1/

26. The Haitian population also suffers greatly from poor sanitation, air pollution, unhealthy housing and untreated waste. Only 32 per cent of Haiti's

rural population and 50 per cent of the urban population reportedly have access to drinking water, and the service rate in some villages is said to be less than 10 per cent. 1/

27. While the general mortality rate is said to be 36 per 1,000, infant mortality (birth to one year of age) is estimated at between 92 and 107 per 1,000. Transmissible, infectious and parasitic diseases are among the leading causes of death. Eighty per cent of the population is said to be exposed to the risk of malaria.

28. Another major cause of morbidity is malnutrition. Haiti's population is reported to suffer from an average calorie deficiency of 20 per cent and an average protein deficiency of 32 per cent. 1/ The economic crisis, the increase in unemployment and underemployment and consequently the family's reduced purchasing power, as well as minimal agricultural production are the principal factors in the level of malnutrition in Haiti.

29. The farming sector is Haiti's most important economic sector, accounting for 70 per cent of the country's food needs; in 1990, out of 2 million people employed in Haiti, 1.3 million were in agricultural jobs. 1/ However, deforestation and soil erosion are reportedly jeopardizing the country's current and future productive capabilities. In addition, structural problems and the droughts of 1990 and 1991 caused a drop in production of the main food crops.

30. Schools, electricity, telephones and roads are scarce or, in the rural areas, lacking altogether. Furthermore, since October 1991, the return of the population to rural areas to escape from repression and unemployment has intensified the problem of inadequate drinking water, health and malnutrition.

III. THE HUMAN RIGHTS SITUATION IN HAITI

A. Introduction

31. During the period since February 1993, date of the Special Rapporteur's last report to the Commission on Human Rights, repression and politically motivated violence have persisted in Haiti. Human rights violations have remained systematic and widespread; harassment, intimidation, attacks, arbitrary arrests, summary executions and torture continue to be carried out with impunity by members of the military and civilians working with them, especially the so-called "section chiefs". Such violations have prevailed, despite the presence of the Joint United Nations-Organization of American States International Civilian Mission to Haiti, and even following the signing of the Governors Island Agreement on 3 July 1993. As stated in the interim report of the Mission for the period from 9 February to 31 May 1993, "... the Mission noted that, as it was gradually deployed, individuals, organizations and sectors of the population regained confidence and tried to recover rights of which they had been deprived since the coup d'état. The response of the authorities to these attempts has been increased, or at least more selective, repression" (A/47/960 and Corr.1, para. 13). Victims continue to include members and leaders of popular and human rights organizations, peasants, trade unionists, students, journalists, clergy and anyone suspected of supporting the return of President Aristide. Repression in the rural areas and in Port-au-Prince slums,

such as Cité Soleil, remains particularly intense, and even possessing or circulating photographs of President Aristide can be a cause for arrest. According to information received by the Special Rapporteur, the number of those killed since the September 1991 coup by the Haitian armed forces, including the army, police and their civilian supporters, is believed to be as high as 3,000. As one source states, it is difficult to assess the actual number of political and extrajudicial killings because the judicial authorities rarely conduct criminal investigations into any unexplained deaths, including violent ones such as murder, whether political or not. 2/

32. Security forces continue to extort money from the poorest people, who pay in order to avoid arbitrary arrests, beatings and ill-treatment or to obtain their release from prison. Such extortions have forced some victims to sell all their possessions or surrender the deeds to their land in order to pay their ransom, leaving them even further impoverished.

B. Violation of the right to life, liberty and security of person

33. Violations of the right to life and physical integrity continued in Haiti during 1993, intended primarily to restrict or prohibit the exercise of the freedom of opinion and expression, assembly and peaceful association. 3/ Cases of summary execution, physical violence, persecution and harassment have been brought to the attention of the Special Rapporteur. Persons suspected of supporting President Aristide continue to be particularly targeted, as do members of trade unions, popular organizations, and neighbourhood associations, as well as simple citizens who had the misfortune to be in the wrong place at the wrong time. Children, women and the elderly have not been immune to the violence.

34. There was an upsurge in human rights violations in Haiti in the spring of 1993, particularly in Port-au-Prince and the North-West and Central Departments. According to reports received by the Special Rapporteur, the rise in violations may have been a reflection of the military's unease at the negotiations under the auspices of the United Nations and OAS. In the period from 30 April to 30 May in Port-au-Prince alone, at least 15 persons are said to have been summarily executed by members of the military and the civilians working with them. 4/

35. The International Civilian Mission has expressed particular concern about acts of violence carried out by the zenglendos or other criminal groups acting with impunity and apparently under the cover, or with the express or tacit consent, of the de facto authorities. The term zenglendos denotes criminals who are recruited from groups ranging from the marginal social strata found in working-class districts to police officers themselves, usually acting at night, in civilian clothes and with official weapons. This phenomenon, which is particularly evident in Port-au-Prince, is aimed, in some cases at least, at intimidating sections of the democratic opposition, and goes hand in hand with the upsurge in arbitrary executions for political reasons. In the working-class districts, zenglendos are creating a climate of general fear, for their victims are not necessarily political militants or sympathizers. The existence of paramilitary groups or bands of delinquents which are tolerated by the army has

also been reported in certain provincial regions (A/47/960 and Corr.1, paras. 28-30).

36. The following are among the cases of summary or arbitrary killings brought to the Special Rapporteur's attention:

37. On 22 March 1993, Yvon Raymond, a Catholic church official at Les Cayes, was reportedly killed by armed civilians. On 24 March, the bodies of Pastor Marcel Pontus and Jeannot Louis Jean, members of the Evangelical Baptist Mission in the south of Haiti, were recovered from the University Hospital morgue; the victims are said to have been abducted on 18 March 1993 by an armed civilian and taken to military headquarters. Following his disappearance on 16 March 1993, Jean Jorélian, a well-known Aristide supporter, was found dead during the week of 22 March; his body reportedly bore signs of beatings and machete wounds.

38. On 5 May, Jean-Claude Drouillard is said to have been killed by armed civilians in Delmas 17, Port-au-Prince, because he was too interested in political problems. 4/ On 9 May, Mrs. Illia Davilma was reportedly summarily executed by members of the military in Cité Soleil, Port-au-Prince, for having informed members of the International Civilian Mission of the situation of repression in the country. 4/

39. On 17 May, at about 1 a.m. at Pétion-Ville, four men in police uniform reportedly burst into the home of Frédéric Dabon who, together with his brother-in-law, Abel Sarasin, was considered to be a supporter of President Aristide. They demanded to see Mr. Dabon. Since he was not at home, they turned on Mr. Sarasin, a friend who had stopped by, and killed him. They then demanded 750 Haitian dollars from Mrs. Afia Dabon before fleeing (A/47/960 and Corr.1, para. 33 (a)).

40. On 27 July, Senator Thomas Eddy Dupiton was reportedly shot and wounded in front of his house by unknown men who opened fire on him. Several other persons who were with him were also reported to have been wounded.

41. It is further alleged that bodies have been left on the streets of Port-au-Prince. Residents of the Zone of Lafito reportedly denounced the discovery of the bodies of eight young people who are believed to have been summarily executed there during the night of 2 to 3 March. The body of a 12-year-old girl is said to have been seen on 14 April on a Port-au-Prince sidewalk. The following day, in exactly the same place, the body of a young man whose feet and hands were bound was discovered; both corpses reportedly remained on the street throughout the day.

42. Carmen Dorcéus, a mother of two young children resident at Pont Sondé, is said to have been subjected to persecution by members of the military. Reportedly, on 7 February, two members of the military and a woman violently entered her home and demanded the whereabouts of her husband. When she replied that she did not know where he was, the soldiers are said to have forced her to leave her home with her three-month-old daughter and taken her to an abandoned pharmacy where there were two other people. After speaking to her, they are said to have taken her back to her home, where she was then beaten and raped by the soldiers, and her young daughter slapped.

43. It has been reported that in early April members of the church, political parties and labour unions were subjected to particular persecution and harassment by the military forces. Among the victims were members of the Baptist church, Faneyus and Antoine Suprenor; the elected mayor of Môle Saint-Nicolas and member of the Christian Democratic Party, Antoine Brunot; and members of IPAB (Inyon Peyzan Agrikilte de Bombardopolis). On 1 April, at Bombardopolis, members of the military are said to have severely beaten Jean-Claude Clergé, a justice of the peace and member of IPAB appointed by the constitutional Government. On the same day, at Flosky, the same military group is said to have ransacked the headquarters of IPAB and beaten several young girls who were present. In mid-April, the staff and children at the orphanage for street boys "Lafanmi Selavi" (La Famille c'est la vie) in Port-au-Prince are said to have been subjected to threats and harassment by a group of some 10 attachés (civilians working with the police). The orphanage was founded by Jean-Bertrand Aristide in 1986 and since the coup d'état of 1991 has reportedly been the target of a number of violent episodes involving the security forces.

44. Grave concern has been expressed about the upsurge in summary executions and suspicious deaths in Port-au-Prince during July 1993, when 36 cases were identified. According to the International Civilian Mission, the targets of these grave human rights violations are members of popular organizations and neighbourhood associations, but also simple citizens who had the misfortune to find themselves in the path of the killers. The principal authors of these executions are organized bands of armed crooks (malfaiteurs) who act with complete impunity. Known as zenglendos, they sow terror during the night in the poor areas of Port-au-Prince. In recent weeks, areas until recently spared, such as Canapé Vert, were the scene of violence and the terror of zenglendos. In some cases, according to eyewitnesses, those responsible for the executions are police or their civilian assistants. 5/

45. The Mission further reports that it is investigating cases of summary executions and corpses discovered at Arcahaie, Saint-Marc, Miragoâne and Fond des Blancs.

46. According to the International Civilian Mission, to its knowledge not one presumed author of arbitrary execution has been arrested at this time. While justices of the peace have, in several cases, proceeded to record the death and order the removal of the corpse, judicial inquiries do not appear to progress. 5/

47. The following violations of the right to life were reported to have occurred in Haiti in August 1993: 6/

48. On 16 August, Andrel Fortune, member of the Alliance des organisations populaires de Las Cahobas, was reportedly shot in the back by a soldier. He is said to have escaped two attempts to arrest him on 25 and 28 June following demonstrations in support of President Aristide and to have since been in hiding.

49. On 9 August, in the vicinity of Babiole, a driver for the Couronne Distillery was shot by a uniformed member of the military who was riding a motorcycle. The driver was making deliveries in the area and was accosted by the soldier while he was behind the wheel of his truck. The soldier opened the

door of the truck and fired three shots. Although he was taken by taxi to the General Hospital, he died as a result of his wounds.

50. On 5 August, in Port-au-Prince, the bodies of three unidentified individuals were reportedly discovered riddled with bullets on the Jean-Jacques Dessaline Boulevard. That same day, the body of Jeanjean Delbouin was discovered only yards away from the office of the International Civilian Mission; he had been shot and beaten, and his hands and feet were bound. Also that day, at around 4.30 a.m., armed men reportedly executed a 43-year-old businessman in the Bolesse district and beat his wife and 14-year-old son. Some of the attackers are said to have been wearing military helmets.

51. On 3 August, at Carrefour Vincent, a band of armed civilians killed Antoine Joseph, aged 46, a street vendor. Moments earlier, the band had killed Mr. Joseph's neighbour, Adnor Larose, aged 47.

52. A wave of violence which swept over Haiti in September accelerated on 8 September immediately following a ceremony which took place to reinstate the mayor of Port-au-Prince, Evans Paul. At least a dozen people were killed and over 70 wounded by attachés during the violence which ensued. Many of the violations are said to have been directed at supporters of President Aristide. Although the police are said to have been present, they reportedly did not intervene and did nothing to stop the violence.

53. On 11 September, Antoine Izméry, a prominent supporter of President Aristide, was murdered by gunmen described by some sources as plainclothes policemen, after being dragged from a church. He had been attending a mass at the Saint John Bosco Church at La Saline, a shanty town on the outskirts of Port-au-Prince. At least five people were reportedly killed and some 70 injured in the attack. Uniformed policemen are said to have passed by the church minutes before and after the attack, but reportedly failed to intervene. Armed men are said to have beaten supporters of President Aristide outside the church.

54. On 14 October, the Minister of Justice, Guy Malary, was shot and killed in Port-au-Prince. Two of his bodyguards and an unidentified fourth person, believed to be his driver, were also killed. Attachés are thought to be responsible.

55. Nearly all the cabinet ministers who were sworn into office in September 1993 are said to have received death threats from civilian gunmen who have links to the police and the army.

56. Furthermore, members of the observer mission and persons in contact with it are said to have been subjected to acts of intimidation and even provocation.

57. These acts of violence committed by the armed forces, the police and their civilian accomplices constitute violations of article 3 of the Universal Declaration of Human Rights; article 4, paragraph 1, of the International Covenant on Civil and Political Rights; article 4 of the American Convention on Human Rights; and article 19 of the Haitian Constitution.

C. Violation of the right to protection against arbitrary arrest and detention

58. Wide-scale arbitrary arrests and detention, almost always accompanied by torture or other ill-treatment, continue to be among the most persistent violations carried out in Haiti. Victims include anyone suspected of supporting President Aristide, students, journalists, human rights activists, priests, nuns, rural and community leaders and anyone else involved in opposition activities. The majority of arrests are reported to be made without a warrant and outside the hours prescribed by the constitution (6 p.m. to 6 a.m.) for arrests of people not caught in flagrante delito. Although the Constitution requires that anyone arrested be brought before a judge within 48 hours, in practice detainees are regularly held for days or weeks without having been brought before the authorities, and are commonly interrogated without legal counsel present.

59. On 25 February 1993, Sensi Joseph was reportedly arrested on rue Lamarre by soldiers, after a United Nations vehicle dropped him in front of his home. According to the victim, 30 other people were arrested the same day and taken to the Anti-Gang Investigation Service. All those persons are said to have been beaten and imprisoned for the night. 7/

60. Children have not been immune from arbitrary arrest and ill-treatment. On 26 February, a 13-year-old child is said to have been arbitrarily detained in Cité Soleil, Port-au-Prince, by persons suspected to be members of the army, and held incommunicado from his relatives, who reportedly could not get any information about him. On 17 March, Erneus Jean Audelin, a student at the Faustin Soulouque School, is said to have been detained for no apparent reason at Petit-Goâve by members of the military. In early March, at Jérémie, a number of youths are said to have been arrested and beaten by the military, and on 18 March, in Port-au-Prince, soldiers are said to have launched a large-scale operation against street children and vendors who sleep outside of buildings. The soldiers reportedly hit the victims with clubs and a 14-year-old is said to have suffered a fractured skull after being beaten while he slept.

61. Supporters of President Aristide are said to have been subjected to harassment and arbitrary detention at Môle Saint-Nicolas following the distribution on 30 March 1993 of leaflets and photographs of President Aristide and calls for a constitutional government. A number of them are said to have been severely ill-treated, and others subjected to persecution by the military and forced to flee the area. One of them, Manistin Capricien, is said to have needed hospitalization following the torture to which he was subjected. According to information from the International Civilian Mission, members of the Mission went to Môle Saint-Nicolas and protested to the military commander of the district. The commander acknowledged responsibility for the violence, justifying it on account of the inefficiency of the judiciary and the need to use force in order to obtain information. 8/

62. On 31 March, members of the military reportedly went to the Hinche home of Fritz Charlot Pauleus, allegedly the only member of the opposition to return to the region following the coup d'état in September 1991, and whom the authorities accused of being responsible for the above-mentioned distribution of the photographs and publicity in favour of President Aristide. Not finding

Fritz Pauleus at home, the military is said to have arrested his wife, Yvrose Simeon, a family member, Ilfrid Dorme, and a family friend, Alex Cameau. Two other persons (names given) are said to have been arrested on suspicion of having seen or spoken to Fritz Pauleus. Mr. Pauleus's mother reportedly went into hiding.

63. It has further been reported that the section chief of the first section of Savanne Carée, Lecompte Michaud, has arrested peasants and then demanded ransom from them for their release. Mr. Michaud has reportedly set up his home as a courtroom and private prison. In March, the section chief is said to have arrested a peasant named Tison and held him for three days in his private prison. The same treatment was reportedly meted out to a man called Jean from Kacoule. The authorities are said to have taken no measures to stop the illegal practices of this section chief and his large number of deputies. 9/

64. On 23 April, Cajuste Lexius, Secretary-General of the Centrale générale des travailleurs (CGT), Phabonor Saint Vil, Secretary of CGT, and Saveur Aurélus, leader of an agricultural union at Gros-Morne, are said to have been arrested without a warrant by policemen from the 30th company who reportedly beat them as they were entering the offices of Radio Caraïbes in Port-au-Prince, where they were going to deliver a press release in support of a general strike scheduled for 26 April. While in police custody, they are said to have been beaten severely with batons and kicked by policemen. On 26 April, they were reported to have been transferred to the Anti-Gang Investigation Service. Cajuste Lexius is said to have been unconscious for two days as a result of the ill-treatment inflicted upon him and, after being examined by an independent doctor at the request of the International Civilian Mission, was transferred to a military hospital on 27 April where he was reportedly held until 21 May, when he was released. Phabonor Saint Vil and Saveur Aurélus were released on 29 April. All three men are said to be in need of medical attention as a result of the ill-treatment to which they were subjected by the security forces, in particular C. Lexius who reportedly suffered kidney failure while in military custody and was put on dialysis. Other members of CGT are reported to have been arrested in late April.

65. During the first week of April 1993, it is reported that five peasants (names given) accused of being supporters of President Aristide were violently detained in the Plateau Central by members of the military forces and imprisoned. The arbitrary detention of supporters of President Aristide continued in the months of May and June. René Sylvéus Benjamin, of Pont Sondé, is said to have been arbitrarily arrested by members of the military for distributing photographs of President Aristide; reportedly, when Father Vernet of the Sacré Coeur parish intervened on his behalf, Father Vernet was subjected to ill-treatment. On 26 May, Lionel Félix was arrested and beaten, also at Pont Sondé, for the same reasons. He is said to have been taken to Saint-Marc prison where he was severely tortured. Norbert Lubin, Secretary-General of the Komite Katye Mom Kamari (KKMK) is said to have been brutally arrested on 16 June in Port-au-Prince by members of the military and tortured while in detention. He is said to have been released as a result of popular protests.

66. During July and August 1993, attacks on freedom of association and expression continued, as well as violations against personal security and physical integrity. Victims of human rights violations (several names given)

are said, furthermore, to be subjected to persecution because they are witness to the ill-treatment which had been inflicted upon them during detention. 10/

67. These arbitrary detentions constitute violations of article 9 of the Universal Declaration of Human Rights, article 9 of the International Covenant on Civil and Political Rights, article 17 of the American Convention on Human Rights, and article 24 of the Haitian Constitution, which established that the State guarantees the freedom of the individual.

D. Violation of the right to protection against torture and cruel, inhuman or degrading treatment and punishment

68. Torture and ill-treatment by the military, police and civilians working with them continue to be widespread and systematic in Haiti. Detainees are said to be routinely beaten upon arrest, some so severely that they require hospitalization; others have reportedly died in detention as a result of the torture to which they were subjected.

69. On 15 April 1993, Oriol Charpentier was arrested at Thiotte, accused of stealing from his employer's house and acquitted for lack of evidence by the magistrate, who apparently told him to go to the military authorities to report his release. Some hours later the magistrate was called to the barracks to certify the death of Oriol Charpentier. The military authorities, the doctor who signed the death certificate and the prisoners who were present when the events occurred gave contradictory accounts of the circumstances and causes of death. Oriol Charpentier was hurriedly buried by the military, who refused to allow the body to be returned to the family. On 3 May, the judge at Terrier Rouge certified the death in prison of Georges ("Andvil") Mathias and attributed his death to a chronic ailment. However, according to his family, Mr. Mathias was in good health before he was arrested on 23 April and accused of stealing cattle. He would appear to have been brutally hit by the attaché who arrested him. Georges Mathias was taken away and held initially at Trou du Nord and was only handed over to the local tribunal four days after his arrest. The judge at Trou du Nord declared himself incompetent to hear the case, and the prisoner was transferred to Terrier Rouge, where he appeared before the deputy magistrate on 29 April. The deputy magistrate then declared himself incompetent to hear the case and apparently ordered that Georges Mathias, who was unable to stand, should be taken to Fort-Liberté (A/47/960 and Corr.1, para. 24).

70. Those known or suspected of being supporters of President Aristide are at particular risk. On 11 February, Clothaire Nestor, Philomène Senatus and Josamon Meyis were reportedly arbitrarily arrested at Savanette by soldiers accompanied by the local section chief and accused of being members of the Lavalas movement (supporters of President Aristide). On 12 February, Mrs. Richard Sineis was arrested in the village of Lagivas, in the same area; all four women are said to have been severely beaten and thrown into prison. Mrs. Sineis, who was reportedly pregnant and near to term is said to have become seriously ill following the treatment to which she was subjected.

71. On 25 February, Monsignor Willy Romélus, Bishop of Jérémie, human rights advocate Paul Dejean, actor Marcel "Lobo" Casséus, grass-roots activist Emmanuel Jean-Louis and others are said to have been beaten and arrested outside

the National Cathedral in Port-au-Prince by police and paramilitary agents as they left a memorial service for those who died in the sinking of the ferry Neptune. Reportedly, among those arrested by police and later released were two journalists and at least a dozen seminarians, some of whom are said to have been subjected to ill-treatment while in detention. One of them, Pharnes Jan, who was reportedly taken to the National Penitentiary, is said to have been so badly beaten that he needed urgent medical attention. According to the report of the International Civilian Mission, incidents took place throughout the ceremony and some of those present had to be evacuated under the protection of the Mission and foreign diplomats. On 5 March, Volvick Figaro, who was accused of having distributed political leaflets on the day of the mass, was arrested and severely beaten in a building of the Haitian customs (A/47/960 and Corr.1, para. 14 (a)).

72. On 3 March, at 2 a.m., a group of armed men is said to have invaded and ransacked the house of Saint-Jean Servil on Avenue Pouplard in Port-au-Prince, beating his 73-year-old mother and beating and raping his wife. The men were reportedly enraged at finding photographs of President Aristide and leaflets about the Lavalas movement.

73. On 26 June, the military is said to have entered the poor neighbourhoods of Polcos and Lòt Bò Kanal looking for members of peasant organizations. At least nine persons are said to have been severely beaten during the search and the homes of two popular leaders were reportedly looted.

74. On 28 June, a 70-year-old man is said to have been arrested at his home by members of the military, beaten and taken to the military barracks. Reportedly, the man was arrested in the place of his son, who was sought by the military because he is the leader of a local community organization of Lòt Bò Kanal. He is said to have been released the following day.

75. In the North-East Department, on 26 June, Amelus Pierre, a 33-year-old farmer, was reportedly arbitrarily arrested for lack of respect towards a corporal and taken to the Capotille outpost, where he was severely beaten with blows of a machete, particularly on the neck, and subjected to torture. He was reportedly detained without charge for 25 days. He is said to have been released on 22 July by the government commissioner, following the failure of the military to present evidence for his arrest. As a result of the treatment to which he was subjected, Amelus Pierre is said to be in very poor health. 11/

76. It was further reported that on 7 August, at Peroin, Mrs. André Claude died as a result of the torture to which she had been subjected in the office of a section chief named Edner Odeyid. She was reportedly arrested in place of her husband for political reasons. He is said to have been in hiding for nine months.

77. Those acts of torture and physical punishment constitute violations of article 5 of the Universal Declaration of Human Rights; article 7 and article 10, paragraph 1, of the International Covenant on Civil and Political Rights; article 5 of the American Convention on Human Rights; and article 25 of the Haitian Constitution.

E. Violation of the right to freedom of assembly and association

78. The Haitian military authorities have continued to engage in human rights violations with a view to prohibiting groups from exercising their right to freedom of assembly and association. Peaceful demonstrations in support of President Aristide have been broken up, often violently, by members of the armed forces, and frequently the participants arrested and subjected to ill-treatment.

79. On 29 March 1993, the anniversary of the adoption of the 1987 Constitution, a peaceful demonstration in support of the Constitutional President is said to have been violently repressed at Gonaïves. Other similar demonstrations took place in that town on 21 April, on the premises of the Lycée Fabre Geffrard, and on 11 May in the street. These were also reportedly accompanied or followed by attacks by soldiers on demonstrators or onlookers (A/47/960 and Corr.1, para. 14 (b)). One of the organizers of the first demonstration is said currently to be in hiding, and one of the demonstrators of 21 April was reportedly arrested, severely beaten and detained for several days before the International Civilian Mission was allowed to see him. He is said to have been taken to court and released on 1 May. 12/

80. On 28 April, members of the Mouvement paysan de Papaye (MPP) reportedly affixed posters of President Aristide on the walls in the town of Hinche, on the occasion of the twentieth anniversary of MPP. During the night of 28 to 29 April at about 2 a.m., a member of MPP, Hilton Etienne, is said to have been arrested without a warrant at his home by a gang led by members of the security forces. At least three other alleged members of MPP were arrested the same night. According to the security forces, they were arrested in the act of illegal association with the intent of disturbing the public order. They were later released. Mr. Etienne, however, is said to have been brutally beaten upon arrest and during his detention. As a consequence, his left wrist was broken and he suffered multiple contusions (A/47/960 and Corr.1, para. 14 (e)).

81. On 20 May, Jeanne Pierre and Fritz Jean, members of a youth organization at Mirebalais, were reportedly arrested for having held a youth meeting. On 30 May 1993 at Gros Moulin, Lascahobas, Antonine Noël is said to have been arrested by the section chief and subjected to severe ill-treatment for having organized an illegal meeting: a game of dominoes. He is said to be in poor health as a result of the torture to which he was subjected. On 22 and 23 June, the military is reported to have violently dispersed a demonstration in favour of President Aristide at Raboteau. On 25 June, they are said to have prevented a gathering from taking place at Lòt Bò Kanal, severely beating a man they found waiting for the demonstration to begin.

82. On 27 June, in commemoration of the patron saint of Haiti, a number of gatherings are said to have taken place in Port-au-Prince and the surrounding areas, mostly of a religious nature. At the end of a mass in the Church of Notre Dame du Perpétuel Secours in Port-au-Prince, a number of people were distributing tracts and leaflets in favour of President Aristide. This reportedly elicited a violent reaction from the soldiers around the church and their civilian supporters; a little girl is said to have received a bullet wound in the leg and a number of people, including an elderly man, are said to have been severely beaten. Seven persons are reported to have been captured and taken to the Anti-Gang Investigation Service, where they are said to have been

beaten. One of them, Nickson Desrosiers, coordinator of the Plateforme Fort Saint-Clair, reportedly required urgent hospitalization as a result of the torture to which he was subjected. Members of the International Civilian Mission are said to have been denied access to the detainees by the military authorities.

83. According to information received on 28 June, after the police broke up a demonstration in support of President Aristide in Cité Soleil, Vesnel François, a member of the Platform Organizations in Cité Soleil, is said to have been arrested and so severely beaten by the police that he was unable to stand and required hospitalization. It is further reported that a journalist from Radio Tropique FM and a photographer from the weekly Haïti Progrès, who were covering his appearance before the police-court magistrate on 1 July, were physically aggressed by police and armed civilians and their photographic material confiscated.

84. On 29 June, at Zabricot, 13 persons, most reportedly members of MPP, were arbitrarily arrested following a demonstration complaining against the return of the section chief. The persons concerned are said to have been accused of participating in an unauthorized demonstration with a view to disturbing the peace, and taken to the barracks at Hinche, where they were reportedly beaten and subjected to particularly cruel treatment.

85. On 10 July, 50 soldiers are said to have broken up a demonstration in Port-au-Prince in support of President Aristide, arbitrarily arresting and beating a number of participants.

86. The Haitian authorities are thus systematically violating article 20 of the Universal Declaration of Human Rights; article 21 of the International Covenant on Civil and Political Rights; articles 15 and 16 of the American Convention on Human Rights; and article 3 of the Haitian Constitution.

F. Violation of the right to freedom of opinion and expression

87. The right to freedom of opinion and expression has been severely curtailed in Haiti since September 1991. Print and broadcast journalists have continued to be subjected to threats and acts of intimidation with a view to preventing them from going about their work, especially when covering events in which human rights violations have taken place. According to the International Civilian Mission, radio journalists in the Artibonite Valley and at Fort-Liberté and Miragoâne have been the subject of acts of intimidation, threats or detention by elements of the armed forces or persons acting on their orders. The authorities are pursuing a strategy aimed at silencing the provincial media. Several regions are now virtually without press or radio. Twenty months after the coup d'état and three months after the installation of the Mission, no real improvement is evident in terms of freedom of expression in this sector. Many radio stations which had to interrupt their programming after the coup d'état are still closed down, while others have stopped or have restricted the broadcasting of news. A large number of journalists have had to stop working, and several have been forced to live in hiding. Vendors of Liberté, the pro-Aristide creole newspaper, are regularly subjected to harassment, especially in the provinces (A/47/960 and Corr.1, paras. 20-21).

88. According to information received by the Special Rapporteur, Arlette Josué, a journalist at Signal FM and a Voice of America correspondent, was detained on 25 February 1993 as she was leaving the funeral mass held at the cathedral in Port-au-Prince and taken to the Anti-Gang Investigation Service, where she is said to have been subjected to ill-treatment and accused of having sung a subversive song during the mass.

89. During the night of 10 April, three persons, including Ernst Ocean, a law student and correspondent for Radio Tropique at Saint-Marc, were reportedly arbitrarily arrested, severely beaten, and taken to the Saint-Marc military barracks for having distributed pamphlets supporting President Aristide. Ernst Ocean is said to have been released the same day. According to information received by the Special Rapporteur, it would appear that the interest shown by a member of the International Civilian Mission contributed to securing his release.

90. On 9 June, Pierre Paul, a peasant living in Plateau Central, is said to have been arrested by the section chief at Malanga for having expressed his satisfaction at the announcement of the resignation of Prime Minister Marc Bazin; he was reportedly tortured severely before being released. It is further alleged that, following an article he wrote about a popular demonstration at Léogâne on 27 June, the journalist Marius Emmanuel had to go into hiding to escape reprisals and persecution by members of the military in Léogâne.

91. Many people are said to have been subjected to harassment and ill-treatment and forced to abandon their homes for fear of reprisals against them for distributing leaflets in favour of President Aristide, having written or uttered slogans, having in their possession photographs of President Aristide, or for listening to foreign radio broadcasts.

92. On 11 June, at Pérodin, 10 members of the peasant organization Rassemblement des paysans (names given) are said to have been captured, ill-treated and incarcerated, on charges of possessing subversive documents. Reportedly, the persons concerned were subjected to torture and released several days later on bail. Other members of the same organization are said to have been forced to leave the region.

93. On 24 June, in Port-au-Prince, several days after the management of the newspaper Liberté announced that they had received threats, a number of street vendors of the newspaper were reportedly captured, beaten and detained in the Anti-Gang Investigation Service for several hours (four names are given). The street vendors of the same newspaper are also said to have been detained and subjected to ill-treatment by security forces in February 1993.

94. On 29 and 30 June, a journalist from Radio Métropole is said to have been summoned to police headquarters after broadcasting information on the negotiations taking place on Governors Island.

95. Such actions are contrary to international norms and constitute violations of article 19 of the Universal Declaration of Human Rights; article 19 of the International Covenant on Civil and Political Rights; article 14 of the American Convention on Human Rights; and article 28 of the Haitian Constitution.

IV. THE MAIN PARTICIPANTS IN THE HAITIAN POLITICAL PROCESS

96. The Haitian political crisis since the coup d'état of September 1991 has been characterized by a complex set of factors and interests and by the active involvement of many participants, both domestic and foreign.

97. Although many in number, the main domestic participants in the Haitian crisis are in fact the military and its allies on the one hand and Aristide and his followers on the other. Throughout the crisis, real and final decision-making power in the de facto Government has remained in the hands of the military, even though that group has always tried to appear apolitical and has taken responsibility in only a few cases. The only talks since the coup d'état that have yielded any relatively concrete results have been those attended by the military, such as the latest ones at Governors Island, New York.

98. The various domestic participants interpret and describe the situation in different ways. For example, the military and its allies accuse Aristide and his Government of human rights violations, intolerance and disregard for other branches of Government; to justify the "need for a strong Government" they invoke the cultural and structural problems supposedly involved in the practice of democracy, brandish nationalist flags and call themselves the champions of sovereignty, insisting daily that the international community has increased the Haitian people's suffering from abroad by applying restrictive measures. Aristide and his followers, meanwhile, point to the illegitimacy of the de facto government, the persistence of serious human rights violations since the coup d'état, the stagnation of all social programmes and structural reforms, the disregard for the popular will and the gradual impoverishment and decline of the Haitian people.

99. The foreign participants, for their part, have justified their presence or acted in the crisis on the basis of their commitments to defend human rights, the problems they face as a result of clandestine immigration, international commitments for the defence of democracy, such as the implementation of resolution AG/RES.1080 (XXI-O/91) of the OAS General Assembly or the resolutions adopted by the United Nations General Assembly and Security Council or the Ad Hoc Meeting of Ministers for Foreign Affairs of OAS, etc. The means employed by these foreign participants have ranged from nothing more than unimplemented economic sanctions to embargoes and other relatively effective measures, from formal statements to the signing of relatively valid, official agreements, from ignorance or denial of the obvious to the acknowledgment of outright lies, and from threats of force to overuse thereof.

A. The main domestic participants

1. The military and its agents

100. The military has played a predominant role in Haitian politics. First, for a long period in the country's history, it held power directly; subsequently, under Duvalier, it worked alongside the tontons macoutes, to ensure the regime's stability. Most recently it has acted overtly, making and breaking Governments. The military has always been the power behind the scenes, although only occasionally has it been seen to wield power directly. Its traditional ally has

been the Haitian bourgeoisie, to which it is linked by social origin and by economic and political interests. It has consolidated its power not only through a monopoly on weapons but also through various features of the country's structure and political process: the lack of legitimate and trustworthy civilian leadership; the weakness of the political parties; the continued existence of the old institution of section chiefs, who depend on the military, report to it and respect it; the fact that military, police and prison-guard functions are all vested in the military; its ability to practise repression with impunity; its privileges, established by law or simply acknowledged in practice; and the wealth its members acquire through illicit trade, smuggling, customs duties and even airport taxes. An illustration of its immense political power is the fact that in the last seven years alone the military has been the main player in the following far-reaching political events: it overthrew Duvalier in 1986; it prevented, through repression and violence, the 1987 elections from taking place; it sought to legitimize its power through elections whose results it later disavowed, ousting through a palace coup first Manigat and then his successor, General Namphy, in 1988; it installed General Avril in power and later sent him into exile; forced by heavy international pressure it had to accept Mrs. Trouillot's Government in 1990, it later sought new civilian allies in the election late in that year. The unexpected outcome of that election, which Aristede won, once again led the military to halt the political development process by the coup d'état of September 1991. Since then it has exercised absolute power, and while it has for some time installed civilians as President of the Republic and Prime Minister, they have held these offices in appearance only. More recently, there have been new demonstrations of the military's power: it installed Marc Bazin as Prime Minister; one year later it did not agree to changes in his cabinet and Bazin was forced to resign. Following Bazin's resignation in June 1993 the military did not appoint any other apparent head of Government, but began to run it without intermediaries. Another event that is revealing of the military's political power is the fact that only towards the end of the negotiations, when General Cédras became directly involved and signed the Governors Island Agreement, was there any hint of a solution to the Haitian political crisis.

101. The armed forces of Haiti number approximately 7,000, of whom the vast majority are based at Port-au-Prince, with over 5,000 performing what is essentially police work. They are in fact more a police force than a military force in the technical sense of the term. One might say that they form a vast repressive machine which enjoys the logistical support, aid and complicity of civilians acting under their orders: the Tontons Macoutes, the section chiefs, the assistants and their militias, the attachés and the armed gangs called "zenglendos", etc. These groups or gangs operate under the direction of the military, which arms and protects them, and act with complete impunity.

102. According to its organizational structure, the command of the Haitian armed forces is supposed to be a collegiate body in which responsibilities are shared; in reality, however, instructions come from certain officers who exercise leadership and have greater power. For example, there is no doubt that throughout the crisis since the overthrow of President Aristide's Government, orders and instructions have come largely from two military-police chiefs: General Raoul Cédras, Commander-in-Chief of the Armed Forces of Haiti, and Colonel Michel François, head of the Port-au-Prince military command and also chief of police. Observers and analysts of the Haitian process agree that there

is no unanimity of viewpoint or position among the military leaders and that there is an underground struggle for power among the highest-ranking officers.

103. The Constitution of Haiti stipulates that the armed forces and the police are separate institutions in terms of both their structure, command and membership and their role in society. A bill setting out this constitutional norm of separation of powers had been drafted and submitted for consideration by the Senate while President Aristide was in office, but discussion and adoption of the bill was deferred by the coup d'état.

104. One of the points of both the Governors Island Agreement and the New York Pact is the separation of the police from the armed forces, and major efforts to this end are currently being made. The programme for modernizing the Haitian armed forces was also given priority in the agreements concluded thus far.

105. It should be noted that, in accordance with articles 264-2 and 264-3 of the Haitian Constitution, the Commander-in-Chief of the Armed Forces is chosen from among the current officers in service holding the rank of general and has a mandate of three years which can be renewed. General Cédras was appointed to the post by President Aristide in March 1991, replacing General Abrahams, although he was not confirmed by the Senate until after the coup d'état. However, the Governors Island Agreement provides for the resignation of General Cédras as Commander-in-Chief of the Armed Forces. It also provides for the resignation of Colonel Michel François as chief of police. The selection by Aristide of the individuals who will occupy these posts will be one of the basic and most sensitive issues facing his Government of national unity at the outset.

106. There is absolutely no doubt that if the provisions of the Governors Island Agreement can actually be implemented - the police and military functions separated, the armed forces modernized and the paramilitary bodies eliminated not only in theory but also in practice - this would constitute a highly significant change in Haitian politics. Under the New York Pact, signed on 16 July 1993, the Presidential Commission and the political forces agreed to pass a law abolishing the paramilitary forces. This will be another very important aspect of the changes, since there is no doubt whatsoever that the military has used these forces to carry out their brutal acts of repression and terror.

2. President Aristide and his supporters

107. Aristide was a political phenomenon in 1990. He finished first in the presidential race despite having been the last candidate to enter. He took on the traditional parties by means of a heterogeneous movement called Lavalas (The Avalanche), which in a very short time managed to mobilize the masses to an extent unprecedented in Haitian history. He came to power with neither a defined programme nor an administrative team, much to the astonishment of all, including possibly even himself and his supporters. His social experience had until then been as a priest of the "petite eglise" (popular church) in his parish, as an activist protesting against injustice and as the founder and organizer of an excellent programme to assist children in the poor neighbourhoods of Port-au-Prince in the "La Famille, c'est la Vie" homes. A charismatic public speaker, yet calm and reserved in private, this soft-spoken,

well-educated man managed to win the hearts of the overwhelming majority of Haitians, particularly the poorest in all regions of the country. The love and the credibility he has inspired among the people are also the result of his tireless struggle against "macoutism", that is, the injustices and cruelty of the repressive system created by Duvalier, whose direct and daily victims have always been the poorest groups in society: the rural population and the inhabitants of the poor urban neighbourhoods. Aristide obtained 67 per cent of the vote in the 1990 election, which had the highest turnout in Haiti's history, and he has maintained this immense popularity throughout his almost two years in exile, despite the campaign to discredit him waged by the Government and other interested groups. Throughout this period of exile, the armed forces have routinely persecuted, beaten and even killed persons found to be supporters of Aristide or even found to have a picture of him. Nevertheless, in poor homes and neighbourhoods the people continue to defy danger and punishment by displaying pictures of "Titid" (as he is popularly known) in increasing numbers. Even when the Special Rapporteur visited Haiti in July and August 1993, after the signing of the Governors Island Agreement, it was still a serious offence to have and display a picture of Aristide. The armed forces not only arrested and beat anyone who affixed such pictures to walls or posts, but also made the person take them down and eat them.

108. The Lavalas movement began not as a party but as a groundswell that carried everyone with it: the rich, the middle class and the rural and urban poor; liberals, social democrats, communists and independents; Catholics, Protestants, voodooists and members of every religion and sect, including of course, most particularly, the priests of the popular church and their vast following, as well as social activists with no ideological or religious commitment. Almost from the beginning, it galvanized the people, excited them and inspired hope. Never before in Haiti had there been a popular movement of such breadth and depth.

109. Aristide's election victory immediately created a broad front of opposition, composed of the traditional political leaders and their weak political organizations and parties, reacting to the emergence of an electoral phenomenon that diminished them even further and reduced their political influence; the armed forces, traditional allies of the oligarchy and the real power, which felt particularly threatened when Aristide made a number of major changes in the high command at the time of his inauguration; the bourgeoisie, who feared popular action in the absence of any clear programme of government and any structures or organization of the mass that had supported Aristide and were calling for the satisfaction of basic needs; the former "Tontons Macoutes", who felt their physical integrity threatened; members of Parliament from various parties who together constituted a majority in the Chambers and who rebelled against some of the positions taken by Aristide, who did not always abide by the legal precepts that govern relations between the President and Parliament; and, lastly, the Church hierarchy, which felt threatened by the power of the priests of the popular church and by popular uprisings such as the ones that had taken place in January 1991.

110. Aristide formed a Government made up of people whose administrative and political knowledge and experience were no greater than his own. He dismissed or failed to recognize the dangers involved and made no attempt to establish good, stable relations with hostile sources of power. He made serious political

errors that gave further impetus to the creation of a powerful opposition front in a country with no experience of democratic politics. It is likely that the popular uprising that had thwarted the Lafontant coup d'état in January 1991 convinced Aristide that the support of the masses was in itself sufficient to ensure stability and protect his Government. The events of September 1991 would prove him wrong.

111. Analysts agree that Aristide has learned much in these two years of exile and political negotiations. He is now capable of controlling the more radical of his supporters. His new programme, rhetoric and positions and the people he has chosen to form the Government of national reconciliation reveal a politician who is capable of coping with the difficult circumstances he will have to face during the remainder of his term and adjusting to the rules of the democratic game.

3. Parliament and the political parties

112. In Haiti, political parties could not be established or operate freely until the overthrow of the Duvalier regime in 1986. They were further weakened by the fact that many party leaders at that time had cooperated with the Duvalier Government at some time in their lives. Confrontations between the leaders and their parties during the transition years from 1986 to 1990 ultimately harmed some parties, led to the founding of others, created strange coalitions and, in general, brought further weakening. All of this contributed to the resounding victory of Jean-Bertrand Aristide and his Lavalas movement in the December 1990 election. Nevertheless, some recently formed parties such as FNCD and KONAKOM supported Aristide during the election, while he was in office and afterwards, through everything that happened in Haiti after the coup d'état.

113. Some political parties and many members of Parliament have played an unusual role in the crisis, forming a tactical alliance with the military which became a "legal" obstacle to Aristide's return. In the days following the coup d'état, they appointed "President" Nérette and "Prime Minister" Honorat for the obvious purpose of legitimizing the action of the military. During the Cartagena talks they refused to acknowledge Aristide's investiture. They sabotaged the implementation of the Washington protocols. They appointed Marc Bazin Prime Minister with the approval of the military and bitterly opposed the negotiations mediated by OAS, the United Nations and Special Envoy Dante Caputo. And they have taken every opportunity to make it known that they do not want Aristide to return.

114. The New York Pact, signed on 16 July 1993 after the Governors Island Agreement, requires them to reverse their position and accept Aristide.

4. The Catholic Church

115. Haiti is a deeply religious country. The Catholic Church in particular has played a major role in the development of the Haitian people. It was a fundamental factor in the liberation struggle that culminated with the proclamation of independence in 1804, and it has continued to exercise great

influence throughout the history of the Republic. In recent decades, under the Duvalier regimes (1957-1986), a new relationship between the Catholic Church and the Government evolved. François Duvalier used the Haitian clergy to bolster his political activities, consolidate his regime and protect his interests. After the fall of Jean-Claude Duvalier in February 1986, the Catholic Church adopted a policy of discretion and of not intervening openly in politics. Since then, it has been preoccupied with maintaining its unity, which is constantly threatened by the intense social and political activities of the proponents of liberation theology and the leaders of the popular church. While the Church hierarchy, through the Haitian Episcopal Conference (CEH), had in fact called for greater social involvement by the State, it remained relatively aloof from the political crisis and its consequences during the Governments that followed the fall of Duvalier up to the 1990 election. Following the burning of the cathedral and the Nuncio's residence in January 1991, violent incidents attributed at the time to Aristide supporters, and many public differences with the Government, the Catholic Church has adopted an attitude of open opposition, as well as of caution and self-defence in the face of real and presumed threats and the other difficulties in which it has become caught up.

116. Viewpoints and positions differ within the Church hierarchy itself with regard to the Government that has emerged from the military coup of 29 September. Although one faction appears relatively passive and even complacent about the de facto Government, another has actively denounced and opposed it. The open and determined opposition to the military Government within the Catholic hierarchy is led by the Bishop of the Haitian town of Jérémie, Monsignor Willy Romélus. It will be recalled that Monsignor Romélus was beaten on 25 February 1993 by mobs apparently sent by the military to create a disturbance. The incident occurred as the prelate was about to finish helping to empty the cathedral of the participants in a mass in memory of the victims of the wreck of the Neptune ferry which had turned into a pro-Aristide demonstration.

117. A fact that says much about the Church's attitude towards the de facto Government is that, since the military coup, the only State to recognize the military Government and maintain unbroken diplomatic relations with it has been the Vatican. Moreover, the Haitian Episcopal Conference, unlike the priests who support Aristide, has severely criticized the sanctions imposed by the international community on the de facto Government. On 27 April 1993, the Conference condemned the OAS trade embargo as "inhumane and disastrous" and also condemned the possibility of military action.

118. The popular church is a nation-wide phenomenon. The hierarchy, however, maintains its representativeness and its authority. For this reason, the role and attitude the Catholic Church assumes in the coming months, once the legitimate Government of President Aristide has been restored, together with the relations that develop between the Government and the hierarchy, will have a significant impact on the recovery process. Although the Church hierarchy has not intervened directly in the talks to resolve the crisis and has not to date made any commitment with respect to its role in the transition process, one hopes that it will use its influence to promote political and social stability and a return to democratic normalcy. It should also help to bring about the anticipated institutional changes.

5. The Haitian middle class

119. What can be called the Haitian bourgeoisie is made up of a minority of the population that is, however, economically powerful and dominates the import/export trade, plantation agriculture, the country's nascent industry, and services. Some members of this group have been able to send their children to study at foreign universities, particularly in the United States of America and Europe, and have unquestionably set themselves up as a sort of social and even intellectual élite. In a country characterized by great poverty and an absence of professional training, this social group is truly a privileged one. Unfortunately, it has not worked independently to promote democracy in politics but has always remained more closely allied with the dictators and the military than to the people. It has consequently become a social sector dependent on the armed forces, basically engrossed with its own affairs and concerned with preserving its privileges. The recurrent economic straits in which the Government has found itself have on occasion led this middle class to pay the salaries of the police and the armed forces, thus making them a kind of "praetorian guard". While Aristide was in office, most members of the middle class strongly opposed him, and analysts have speculated that the middle class, or at least a large proportion of it, was a determining factor in the overthrow of the constitutional Government in September 1991. It probably viewed the electoral victory and, subsequently, the Aristide Government as a challenge and even a threat to its traditional privileges.

120. In time, however, the bourgeoisie also became a casualty of the Haitian political crisis that followed the coup d'état. First the embargo and then the blockade, together with the cutting off of trade and foreign investment and the suspension of aid and cooperation programmes, compounded by the political tensions, violence and uncertainty experienced under the de facto Government, spelt danger and difficulty for the business and the interests of this group. This is why the Haitian middle class, too, finally became interested in resolving the political crisis that it had helped to create. It must be said, nevertheless, that until the eleventh hour this group had been resistant to a political settlement. The middle class always feared the prospective return of Aristide as a President and a leader able to impose his will and even, by appealing to his followers, to impose policies through demonstration of popular support. Only when the negotiations had reached a certain point did the middle class begin to change its position and, finally, accept a return to democracy, but always on condition that it would have a "weakened", "neutralized" Aristide who would work with the bourgeoisie and other interest groups in the country to carry out a moderate programme without any further political changes. Aristide's June 1993 meeting in Miami with a cross-section of businessmen, many of whom had encouraged and even financed the coup d'état, reflected this change of heart. On that occasion the Haitian businessmen and Aristide agreed on new rules to be followed when democracy was restored and the President returned. Moreover, the middle class made clear throughout the negotiations that it wanted the military officers involved in the coup d'état to be given amnesty and the armed forces to retain their long-standing hold on power. The middle class thought, and probably continues to do so, that any possible or conceivable weakening of the army would upset the balance of power and thereby threaten to plunge the country into anarchy and widespread violence.

B. Foreign participants

1. The Organization of American States and the United Nations

121. OAS and the United Nations have played an important role in Haitian political life in recent years.

122. First, representatives of OAS and the United Nations were present as observers during the voting that led to the election of Jean-Bertrand Aristide as President of the Republic of Haiti in December 1990. Then, on the basis of the principles laid down in its Charter and in the Santiago Commitment to Democracy and the Renewal of the Inter-American System, the General Assembly of OAS, at its twenty-first regular session, held at Santiago, Chile, in June 1991, adopted resolution AG/RES.1080 (XXI-0/91), entitled "Representative democracy", in which it instructed its Secretary-General "to call for the immediate convocation of a meeting of the Permanent Council in the event of any occurrences giving rise to the sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically elected government in any of the Organization's member States, in order, within the framework of the Charter, to examine the situation, decide on and convene an ad hoc meeting of the Ministers of Foreign Affairs, or a special session of the General Assembly, all of which must take place within a 10-day period".

123. Ever since the overthrow of President Aristide's Government on 29 September 1991, OAS has kept the case of Haiti under review and given it priority. After all, the military coup d'état against the Aristide Government had disrupted the trend towards democratization in the region and posed a challenge both to the Santiago Commitment and to resolution AG/RES.1080 (XXI-0/91).

124. Since Aristide's ouster, OAS has taken, inter alia, the following steps relating to the Haitian crisis. On 30 September 1991, the day after the coup d'état, the Permanent Council adopted resolution CP/RES.567 (870/91), entitled "Support to the democratic Government of Haiti", by which it condemned the coup d'état, reiterated the provisions of the Santiago Commitment, reaffirmed its solidarity with the Haitian people in their struggle to strengthen their democratic system, deplored the loss of human lives resulting from the coup d'état and demanded that those responsible for the violation of human rights should be punished. Lastly, pursuant to resolution AG/RES.1080 (XXI-0/91), it decided to convene an ad hoc Meeting of Ministers for Foreign Affairs of American States to study the Haitian situation and take the necessary decisions.

125. The Ad Hoc Meeting of Ministers of Foreign Affairs of American States was held in Washington, inter alia, on 3 October 1991 with the recently deposed President Aristide in attendance. There the Ministers resolved, inter alia, in resolution MRE/RES.1/91, to reiterate their vigorous condemnation of the coup d'état in Haiti and to demand full restoration of the rule of law and the immediate reinstatement of President Aristide in the exercise of his authority; to recognize the representatives designated by the Government of President Aristide as the only legitimate representatives of the Government of Haiti to the organs, agencies and entities of the inter-American system; to

recommend the diplomatic isolation of the de facto Government and the suspension of economic, financial and commercial ties with Haiti until the rule of law was restored; to urge the Inter-American Commission on Human Rights to take all measures within its competence to protect and defend human rights in Haiti; and to keep open the Ad Hoc Meeting of Ministers for Foreign Affairs in order to take any additional measures that might be necessary to deal with the situation.

126. On 4 October 1991, an OAS delegation headed by its Secretary-General and composed of six ministers for foreign affairs of American States travelled to Port-au-Prince to initiate negotiations for the restoration of democracy. The Haitian military rejected the proposed arrangements, and the mission was forced to return quickly to Washington.

127. On 8 October 1991 a further Ad Hoc Meeting of Ministers for Foreign Affairs of American States was held, at which resolution MRE/RES.2/91 was adopted, expressing the decision to maintain the measures adopted in the resolution of 3 October and not to recognize the de facto Government as legitimate or accept its representation within the organization; and urging the Governments of the States members of OAS to freeze the assets of the Haitian State and to impose a trade embargo on Haiti. The Ministers also decided to establish a special civilian mission to seek ways of re-establishing and strengthening democratic institutions in Haiti.

128. Taking advantage of the easing of tensions generated by statements by the de facto Prime Minister, Mr. Jean-Jacques Honorat, who on 14 October 1991 had announced his "willingness to seek the best road to democracy", the OAS civilian mission arrived in Haiti on 9 November 1991, led by the former Minister for Foreign Affairs of Colombia, Mr. Ramírez Ocampo, who had been appointed to head the mission by the Secretary-General of OAS. Talks began there and were later continued at Cartagena, Colombia, from 21 to 23 November 1991. No agreement was reached.

129. A further attempt was made during the first two weeks of December 1991, when the OAS civilian mission visited Haiti. The negotiations at that point revolved around the designation of a new Prime Minister who would be acceptable to Aristide. Mr. René Théodore, Secretary-General of the former Communist Party (PUCH), now known as the Mouvement pour la reconstruction nationale (MRN), was finally selected. Various difficulties prevented that arrangement from being accepted.

130. In December 1991, a mission from the Inter-American Commission on Human Rights, composed of Mr. Patrick L. Robinson and Mr. Marco Tulio Bruni Celli, also visited Haiti to gather information on the situation in the country and submit a report to the Permanent Council of OAS.

131. On 22 January 1992, the Permanent Council of OAS, after having heard the reports of the Secretary-General and the Inter-American Commission on Human Rights, adopted resolution CP/RES.575 (885/92), establishing a Special Commission to monitor compliance with the embargo.

132. Under the auspices of OAS, and in the face of mounting international pressure, the talks were resumed, and resulted in the signing on

23 February 1992 of the so-called "Washington Protocols", which were promptly disavowed by those who had signed them.

133. On 1 April 1992, the Permanent Council of OAS adopted a declaration on the situation in Haiti in which it expressed its serious concern that, six months after the violent and abrupt interruption of the legitimate Government, the people of Haiti were still being denied their fundamental rights. The declaration also asked OAS member States to increase their controls in order to increase the efficacy of the embargo and to take measures, in keeping with their national laws, against those individuals directly responsible for preventing a peaceful and constitutional resolution of the current crisis, including measures pertaining to visas and the freezing of assets. (This last, of course, was an appeal to the United States Government to impose sanctions against prominent Haitians, both civilian and military, who had supported the coup d'etat.)

134. The Haitian problem was considered in depth by the General Assembly of OAS when it met in the Bahamas in May 1992. In Nassau, prior to the meeting of the General Assembly, an Ad Hoc Meeting of Ministers for Foreign Affairs of American States was held, and on 17 May, resolution MRE/RES.3/92 was adopted, in which the Ministers, inter alia, repudiated the dilatory and intimidating manoeuvres of the sectors that benefited from the disruption of democracy, aimed at preventing ratification of the Washington Protocols, and member States were asked to expand and intensify the trade embargo. In a declaration concerning Haiti adopted during the session, the General Assembly recalled and reaffirmed the unanimous decision of the Ad Hoc Meeting of Ministers for Foreign Affairs to express serious concern over the continual violations of human rights and its profound concern at the situation brought about by the increasingly massive exodus of Haitian nationals to a number of neighbouring countries, which placed their lives at risk; the Assembly also appealed to the hemispheric and international communities in general to extend immediate aid to the displaced Haitians.

135. The Secretary-General of OAS undertook new initiatives. From 18 to 21 August he visited Haiti, accompanied by the Ambassadors to OAS of five Latin American countries, special high-level representatives from other member States, the President of the Inter-American Commission on Human Rights and representatives of the Caribbean Community (CARICOM), the United Nations and the European Economic Community (EEC). The mission's main purpose was to seek new forms of political negotiation that might lead to a solution of the crisis.

136. Upon his return to Washington in the last week of August 1992, the Secretary-General of OAS reported that new opportunities and conditions had been identified for the resumption of the political dialogue. He began at once, both in his personal capacity and through the OAS Unit for Democracy (OEA-DEMOC), to undertake the necessary preparations for launching a new dialogue. To that end, he invited both President Jean-Bertrand Aristide and the de facto Prime Minister, Mr. Marc Bazin, to appoint representatives to resume talks. Talks were in fact resumed between Mr. François Benoît, Minister for Foreign Affairs of the de facto Government, representing Mr. Bazin, and Father Antoine Adrien, representing President Aristide. It was then agreed to send a small civilian mission of observers under OAS auspices.

137. The United Nations, for its part, condemned the coup d'état from the outset of the crisis and recognized the Aristide Government as the only legitimate Government. In the General Assembly, the Security Council and the Commission on Human Rights, the Haitian case was constantly being discussed and analysed. Cooperation between the United Nations and OAS led to a strengthening of the mission of the Special Envoy, Mr. Dante Caputo, whose activities are described below, and to the formation, dispatch, support, financing and activities of the International Civilian Mission. The Security Council decisions imposing economic sanctions were a key factor in the meetings between the parties to the dispute and in the subsequent signing of the Governors Island Agreement.

2. The United States of America

138. From the start of the crisis, the United States Government was actively involved, particularly in OAS and the United Nations, in promoting a negotiated peaceful settlement having as its basic aims the restoration of democracy and the reinstatement of Aristide as President of his country. Further evidence of the United States Government's commitment was the acceptance by President Bush of the credentials of the Ambassador of the legitimate Government, Jean Casimir, even after the overthrow of President Aristide.

139. Although the interest displayed by the United States Government in solving the crisis remained constant, it became more apparent when the new Administration took office in early 1993. The problem of the boat people, President Clinton's criticisms of President Bush on that subject during the electoral campaign, the fear of mass immigration, and pressure from human rights groups, much of the public and black political activists, particularly in the United States Congress, all helped to maintain and even harden the United States Government's position towards the Haitian military regime.

140. A number of events in the first months of President Clinton's Administration bore witness to the United States Government's special interest in solving the crisis.

141. On 26 February, the Ambassador to OAS, Luigi Einaudi, urged the international community to find a solution to the crisis. On 28 February, Secretary of State Christopher said that President Clinton would shortly receive President Aristide; on 12 March, the Secretary of State announced the appointment of Ambassador Lawrence Pezzullo as Special Adviser on Haitian affairs, with instructions to cooperate with the Special Envoy, Mr. Dante Caputo. On 13 March, President Clinton said that he felt "very upset" by the police actions of the de facto Government; on 23 March, the Special Adviser, Ambassador Pezzullo, went to Haiti and, accompanied by Mr. Warren Charles Redman, the new United States chargé d'affaires in Haiti, General John Sheean and various other officials, met with the military leaders, the Presidential Commission appointed by President Aristide, the business sector and the churches, and outlined for them his Government's position regarding the necessity of recognizing Aristide as President. On 30 March, Secretary of State Christopher said that he felt optimistic about the negotiations then under way; on 21 April, a spokesman for the State Department announced that the United States would be preparing stronger sanctions against the military and its wealthy supporters, saying that it had been made clear to the de facto

authorities and their supporters that the present situation was unacceptable. Although he did not specify what type of sanctions would be applied, he let it be understood that they might include the seizure of the personal bank accounts of those members of the military who had carried out the coup d'état and the cancellation of their visas and those of their families; on 17 May, Democratic Representative John Conyers, at the end of a four-day visit to Haiti, said that the United States favoured the restoration of President Aristide's Government, that repression had increased under the de facto regime, and that the best solution to the crisis was political negotiation. On 18 May, the United States Government let it be known that it was up to OAS and the United Nations to fix a specific timetable or a cut-off date for the reinstatement of President Aristide's Government; on the same day, during a hearing in the House of Representatives Foreign Relations Committee, Secretary of State Christopher, replying to a question from Representative Albert Wynn, said that the United States was trying to speed the return of President Aristide and was cooperating closely with the Special Envoy, that some progress had been made, but that there were still many obstacles. On 19 May, a group of black United States Congressmen (the Black Caucus consists of 39 Representatives and one Senator) made it clear that they were ready to use all the legislative tactics at their command to press for a way out of the crisis, saying that the time for negotiation was over; the Democratic Representative from New Jersey, Donald Payne, asked for effective measures to be applied and specifically requested the United States Government to put into effect an oil embargo and to apply sanctions to the military and the Haitian aristocracy which supports it by freezing their assets in the United States and cancelling their visas. On 26 May, it was announced that President Clinton's Administration would consider the possibility of strengthening and tightening the sanctions; on 4 June, President Clinton announced that he would deny entry into the United States to any member of the armed forces or civilians who obstructed the efforts of the International Civilian Mission and the Special Envoy. From that point on, the negotiations took a different tack.

3. The international community as a whole

142. In general, the resolutions condemning the Haitian military's coup d'état enjoyed broad support in the political bodies of OAS and in the United Nations. The OAS General Assembly, the Ad Hoc Meetings of Ministers for Foreign Affairs, the Permanent Council and the Inter-American Commission on Human Rights produced unanimous resolutions on the subject, as did the General Assembly, the Security Council and the Commission on Human Rights of the United Nations. The Council of Europe, CARICOM, various international bodies and organizations and the non-governmental human rights organizations all expressed themselves to the same effect.

4. Individual countries

143. In general, all countries expressed their views on the Haitian crisis, either individually or through their membership in international bodies. However, apart from the United States of America, whose activities are described above, special mention should be made of the activities of three other countries: Canada, France and Venezuela. They, together with the United

States, constituted the "Group of Friends of the Secretary-General" set up to find a solution to the crisis.

V. THE DIFFICULT NEGOTIATING PROCESS

A. Previous efforts

144. As a result of the international community's initial efforts, a meeting was held in Cartegena, Colombia, from 21 to 23 November 1991. The participants included, on the one hand, President Aristide and his advisers and, on the other, delegations from both houses of the Haitian Parliament, led by their respective Presidents, Senator Déjean Bélizaire and Deputy Duly Brutus. Although no agreement was reached, the meeting did have the merit of bringing representatives of at least two of the parties to the conflict together to the bargaining table for the first time since the coup d'état. It marked the beginning of a long process that would culminate in the Agreement signed in July 1993 on Governors Island.

145. Following the meeting at Cartagena, a series of talks was held at the instigation of the OAS civilian mission, which returned to Haiti on several occasions in January and February 1992. Agreement on certain points seemed imminent. In early January, President Aristide had accepted the Haitian Parliament's designation of René Théodore as Prime Minister, but difficulties ultimately arose when it came to implementing the agreed arrangement. February saw the signature of the Washington Protocols, which the parties immediately repudiated and disregarded. All of these talks and negotiations suffered from two fundamental deficiencies: the lack of any real political will for a settlement on the part of the parties and the absence of the military, especially as, in the wake of the coup d'état, real power in Haiti lay in the hands of the military high command. In the end, Parliament did not ratify the Washington Protocols, and they were rendered null and void. Mr. Bazin was subsequently named Prime Minister.

B. The International Civilian Mission

146. The first steps towards the establishment of an international civilian mission and its dispatch to Haiti were taken during the visit to the country in August 1992 of an OAS delegation made up of that organization's Secretary-General, the Ambassadors of five member countries, the President of the Inter-American Commission on Human Rights and representatives of CARICOM, the United Nations and EEC. The OAS delegation hoped to explore opportunities for launching the talks, to become acquainted with the situation and to suggest formulas for an understanding.

147. One of the main points discussed during the talks at Port-au-Prince was the sending of a permanent OAS civilian observer mission which would remain in Haiti until the political crisis was resolved. Efforts continued until September, when the two parties - the de facto Government and Aristide - accepted the idea advanced by the Secretary-General of OAS, of sending a permanent civilian mission. The subject was discussed with representatives of both parties and it was agreed that the mission should be dispatched.

148. There were difficulties from the outset. For example, while Aristide's representatives, led by Father Antoine Adrien, Chairman of the Presidential Negotiating Committee, thought that the civilian mission should involve a large number of participants so that it could observe the situation in the interior of the country and rural areas, the de facto Government's representative, Prime Minister François Benoît, insisted that it should be small. Finally, during the first week of September 1992, it was officially announced that OAS would dispatch a mission, initially composed of 18 observers, which would remain in Haiti for an indefinite period. The purpose of the mission would be to help to secure a general reduction in violence and to promote respect for human rights, to cooperate in the distribution of humanitarian aid and to assess the progress made towards a political solution of the crisis.

149. Once in Haiti, however, the members of the civilian mission found it difficult to carry out their task. On various occasions, the de facto authorities in fact refused to guarantee the safety of the observers, demanding that OAS should sign an agreement with them. The Secretary-General of OAS replied that he would not sign an agreement with an illegitimate Government. This difficulty was subsequently overcome by the signature of a logistical agreement.

150. On 9 February 1993, an exchange of letters between the Special Envoy and the de facto Prime Minister defined the mandate of the International Civilian Mission and provided for its dispatch to Haiti. On the basis of that agreement, on 14 February, the Secretary-General of OAS sent an additional contingent of 40 civilian observers to join the small group already established at Port-au-Prince. The size of the Civilian Mission was subsequently increased. It continued to encounter difficulties in its work, as it received no cooperation from the de facto authorities. At the same time, a small group of United Nations staff was dispatched to Haiti to prepare for the arrival of the members of the mission that would be sent by the Secretary-General of the United Nations.

151. The Civilian Mission's deployment in the interior of the country began on 5 March with the establishment of an outpost at Jérémie, the capital of the Department of Grande-Anse. By the end of March, observer groups had been set up in each of the nine Departments, and the Mission had close to 100 observers deployed throughout the country. From March onward, the Mission began to report back on its activities and the human rights situation in Haiti in general. By August 1993, the Mission had offices and sub-offices in all the Departments and in many municipalities.

152. The Civilian Mission's mandate, responsibilities, method of work and guarantees were defined in the agreement signed between the Special Envoy and the de facto Government in February 1993. The nature, structure, organization, composition and other aspects of the Civilian Mission were established in the memorandum of understanding signed on 6 May 1993 by representatives of the Secretary-General of OAS and the Secretary-General of the United Nations.

153. The Mission is headed by Ambassador Collin Granderson. Its team of human rights professionals, under the leadership Ian Martin, former Secretary-General of Amnesty International, and his assistants, Mr. William O'Neill, Mr. Tiebilé Dromé and Mrs. María Clara Martin, is made up of young professionals

of various nationalities who have a real vocation for service, enthusiasm and sense of responsibility.

154. The Mission has been able to establish observation posts throughout the country. The Special Rapporteur had the opportunity to visit some of these posts during his visit to Haiti. The Mission's functions include: receiving and reporting accusations; protesting violations to the authorities when they occur or are reported, either through press releases or in letters to the military leaders; visiting prisons and other detention centres; providing first aid to those who have been injured, beaten or generally ill-treated; and preparing reports.

155. According to the Mission's report of 3 June 1993 (A/47/960 and Corr.1), although the deployment of observers did not lead to an abatement in the repression, the mere presence of the Mission did have some positive effects: for example, the number of arbitrary detentions decreased; some prisoners were released after the observers applied to the authorities; persons who had been detained since before the Mission's arrival were also released; the number of beatings declined; certain persons who had been living in hiding were able to return to their homes; and efforts were made to exercise the rights and freedoms of association and expression.

156. It should be noted, however, that on many occasions the military not only failed to respect the presence of observers but hindered their work and committed human rights violations as a way of demonstrating its discontent at their presence: for example, on some occasions soldiers chanted hostile slogans when passing in front of the Mission premises, while on others, Mission members and staff were harassed; in addition, various demonstrators and passers-by were beaten in the presence of observers, anti-Mission posters appeared, and on various occasions soldiers burst into private homes where observers were talking to Haitian citizens.

157. There is a belief in international agencies and political circles and among Haitians in general that the observer Mission, particularly the teams involved in human rights work, should remain in Haiti for some time, even after President Aristide is reinstated.

C. Mandate and activities of the Special Envoy

158. On 24 November 1992 the United Nations General Assembly adopted its resolution 47/20, in which it requested the Secretary-General to take the "necessary measures in order to assist, in cooperation with the Organization of American States, in the solution of the Haitian crisis". To that end the Secretary-General of the United Nations appointed as his Special Envoy for Haiti the Argentine diplomat and former Minister for Foreign Affairs of his country, Mr. Dante Caputo, who accepted the assignment and stated that his mission would be one of mediation. The Special Envoy paid a first, exploratory visit in early December, followed by others, during which he met with and obtained information from various political circles in Haiti.

159. Taking into account various factors, including the imperative need to coordinate activities with those already being undertaken by the United Nations,

the Secretary-General of OAS also asked Mr. Caputo to act as his Special Envoy. And so Mr. Caputo was appointed Special Envoy of the two Secretaries-General, thereby acquiring greater stature and negotiating capacity.

160. In February and March 1993 Mr. Caputo travelled to Haiti on several occasions and met General Céedras and representatives of the Church and political parties, as well as Mr. Bazin and the Presidential Commission. On 29 March the Special Envoy spoke of a six-month period for the return of Aristide, but in the face of further difficulties, on 19 April the Secretary-General of the United Nations expressed his concern at the inflexibility of the Haitian military. Prime Minister Bazin hardened his position and accused the Special Envoy, OAS and the United Nations of interventionism and denied any knowledge of a Caputo plan. The rupture was immediately followed by further negotiations, and on 30 April the Special Envoy announced positive developments. In the face of further difficulties it was stated on 20 May at the United Nations that the mission to be undertaken the next day by the Special Envoy would be the international community's last attempt to achieve a negotiated solution to the crisis, before the possibility of sanctions was contemplated. That same day it was announced that the Special Envoy would travel to Haiti accompanied by Ambassador Pezzullo, and that both officials would travel to Port-au-Prince with a stronger message than on their previous visits.

161. During that visit the Special Envoy made public the fundamental elements of his plan: (a) deployment of a multinational police force, subject to the agreement of all the parties and a decision by the Security Council, before the return to power of President Aristide; (b) appointment of a new Prime Minister, proposed by President Aristide and confirmed by the Parliament; (c) an amnesty and other guarantees for the members of the military involved in the coup, who were to resign their positions before the return of President Aristide; and (d) a financial assistance programme of some 1 billion dollars phased over five years, in accordance with plans to be prepared by the expert mission from the World Bank, the Inter-American Development Bank (IBD), the International Monetary Fund (IMF) and the United Nations Development Programme (UNDP).

162. There was uneven progress in the negotiations throughout the first six months of 1993.

163. By mid-June 1993 the prospects for a political negotiation of the Haitian crisis seemed to be fading. The United Nations Secretary-General's Senior Adviser for Political Affairs in a statement to the Security Council on 16 June, said that the de facto Haitian authorities had not shown the political will to reach a negotiated settlement to the crisis. At around the same time the Secretary-General expressed his belief that, in the absence of firmer pressure from the international community, the prospects for a rapid and peaceful solution would be seriously undermined.

164. In these circumstances efforts were intensified. The Special Envoy indicated to the de facto Government that if it did not accept a dialogue with the representatives of the legitimate Government the sanctions provided for under Chapter VII of the Charter would enter into force on 23 June. Exercising further pressure, the Special Envoy at last secured the participation of President Aristide and the Commander-in-Chief of the Armed Forces, Raoul Cédras,

accompanied by their respective delegations, in the meeting that began on 27 June on Governors Island.

D. The Governors Island Agreement

165. On 3 July 1993, following intensive negotiations, the Governors Island Agreement was signed. This Agreement represents the culmination of a long process of talks and pressure which revealed the Special Envoy's skill, experience, persuasive talents and dedication. More than once during the negotiations difficulties arose, owing essentially to intransigence and a lack of political will on the part of both sides. There were moments of discouragement. Just a month before, in May and June 1993, many analysts were referring pessimistically to the Special Envoy's mission and the prospects for a peaceful settlement. At that time, 20 months after the overthrow of Aristide, who remained in exile, the military was clinging to power, the international community stood in condemnation of the situation in Haiti but remained to all appearances impotent in the face of the difficulties and lack of political will to achieve a settlement; equally serious, massive violations of human rights continued day by day, notwithstanding the presence in the country of the Civilian Mission observers.

166. The Governors Island Agreement covers virtually all the issues discussed in the previous talks and negotiations: it is based on mutual recognition of the office and authority of the two principal figures in the crisis. General Cédras recognizes Mr. Aristide as President of the Republic, who recognizes the former as Commander-in-Chief of the Armed Forces of Haiti. (For the text of the Agreement, see A/47/975-S/26063.)

167. The Agreement ends with a solemn declaration: "The President of the Republic and the Commander-in-Chief agree that these arrangements constitute a satisfactory solution to the Haitian crisis and the beginning of a process of national reconciliation. They pledge to cooperate fully in the peaceful transition to a stable and lasting democratic society in which all Haitians will be able to live in a climate of freedom, justice, security and respect for human rights."

168. As soon as the Agreement was signed, the Secretary-General of the United Nations issued a report (A/47/975-S/26063 of 12 July 1993) in which he conveyed the following important information:

(a) Verification of the Agreement would be entrusted to the Special Envoy;

(b) The Civilian Mission would remain in Haiti indefinitely;

(c) Representatives of the Secretary-General would consult regularly with President Aristide to review the progress achieved in the implementation of the Agreement;

(d) He would propose to the Security Council that the sanctions should be suspended immediately upon confirmation of the new Prime Minister by Parliament;

(e) He would consider as failure to comply with the undertakings, inter alia, refusal by the High Command of the Armed Forces to obey the decisions of the new Commander-in-Chief appointed by President Aristide, and the continuation of violations of the human rights and fundamental freedoms set forth in the international instruments to which Haiti is a party and in the Constitution of Haiti;

(f) Upon the return of Aristide and the start of his Government, the Secretary-General would report to the Security Council with a view to the definitive lifting of the sanctions;

(g) The Secretary-General of OAS had informed him that he would take similar action with respect to the measures adopted by that organization; and

(h) The Secretariat was studying the measures to be taken with regard to the provision of development assistance and the implementation of administrative, judicial and police reform, in accordance with the Agreement.

E. Implementation of the Agreement

169. At the time the interim report was drafted only three of the points in the Governors Island Agreement had come into effect: (a) opening of a dialogue; (b) the designation and confirmation of the Prime Minister and designation of the new Government; and (c) suspension of the sanctions.

1. Opening of a dialogue

170. Immediately after the signing of the Governors Island Agreement, the anticipated dialogue between the various Haitian groups involved in the crisis began under the auspices of the United Nations and OAS and with the active participation of the Special Envoy.

171. Talks between the representatives of President Aristide and the political forces and representatives of the Haitian Parliament began on 13 July. In the course of these talks problems arose: for example, the groups supporting President Aristide questioned the presence of various members of Parliament who had been elected in the contested election of 18 January 1993. Two relevant circumstances also contributed to the difficult atmosphere, although they did not form part of the negotiations: the refusal by the Haitian television service to broadcast a tape containing a message from President Aristide, and, the refusal by the de facto authorities to agree to an immediate on-site investigation by an IACHR mission in Haiti.

172. The meeting was well-attended by representatives of almost all the Haitian political sectors. The following is a complete list of the members of the various delegations:

173. Representing President Aristide, the following members of the Presidential Negotiating Commission: Father Antoine Adrien, Fred Joseph, Georgette Omero, Jean J. Molière, Jean-Baptiste Chavannes, Wesner Emmanuel and Michel Gaillard.

174. Representing the Parti nationaliste progressiste révolutionnaire (PANPRA) and the Socialist Group: Serge Gilles, Duly Brutus, Sorel Jacinthe, Anthony Barbier, Jean Lesky Dominique, Ives Duval and Jean-Baptiste Lavaud.

175. Representing the Alliance pour la cohèsion parlementaire: Déjean Bélizaire, Julio Larosilière, Amos André, Pierre-Simon Georges, Joseph Lambert, Rémy Mathieu and Rita Frédérique Mon Coeur.

176. Representing the Front national pour le changement et la démocratie (FNCD) and its allies: Victor Benoît, Evans Paul, Joseph Fignolé Jean-Louis, Hyacinthe Jean-Baptiste, Rondal Pierre Cannel, Patrick Norzeus and Jean-Claude Bajeux.

177. Representing the Constitutionalist bloc: Jean Robert Martínez, Turneb Delpé, Pauyo Herard, Rony Mondestin, René Théodore, Yvon Ghislain and Pierre André Guerrier.

178. Parliament was officially represented by the Presidents of the two Houses: Antoine Joseph, de facto President of the Chamber of Deputies and Vice-President of the Mouvement pour l'instauration de la démocratie en Haiti (MIDH); Thomas Dupiton, de facto President of the Senate; Alexandre Médard, "legal" President of the Chamber of Deputies; and Jean-Louis Firmin, "legal" President of the Senate.

179. All those named signed the Pact, with the exception of: Turneb Delpé, Rony Mondestin, René Théodore and Jean-Louis Firmin.

180. Under the New York Pact, the signatories undertake to observe a political truce of six months to guarantee a "smooth and peaceful" transition to democracy. (For the text of the Pact, see A/47/1000-S/26297.)

2. Designation and confirmation of the new Prime Minister and composition of the new Government

181. Immediately after the conclusion of the Governors Island Agreement and the New York Pact it was announced that President Aristide had decided to nominate Robert Malval as the new Prime Minister. Mr. Malval is a wealthy advertising executive and a prominent businessman. He is an old personal friend of President Aristide and was one of the main contributors to his election campaign in 1990. He owns and manages the Imprimerie Le Natal, the largest publishing company in Haiti; the company provided President Aristide's campaign with public information services and has also published two of Aristide's books. Mr. Malval has never held public office before; he is considered a "moderate" and is apparently widely accepted by the different political and economic groups. He has close ties to the private sector. Mr. Malval was the main organizer of the successful meeting held in Miami on 22 and 23 July 1993, known as the "Haitian Summit", which enabled Aristide to meet representatives of the Haitian private sector, international donors and potential investors from the United States. Mr. Malval has also organized other meetings of reconciliation to clear up doubts and potential misunderstandings between followers of President Aristide and Haitian businessmen.

182. Mr. Malval is 50 years old, holds a degree in political science from the University of Miami and has studied at the Institut des Sciences Politiques in Paris.

183. Finally, after much discussion, Mr. Malval was confirmed as Prime Minister at the meetings of Deputies and Senators of the National Assembly on 23 and 24 August 1993. On 26 August, he travelled to Washington to be sworn in before the President, to whom he presented the list of members of the Government.

184. The new Government was formed on 31 August 1993 of individuals belonging to different parties and sectors of the country. Only PANPRA and the Socialist Group were left out of the Cabinet. Malval's first Cabinet was composed as follows: Minister of the Interior, René Prosper; Foreign Relations, Claudette Werleight; Justice, Guy Malary; Defence, Jean Beliotte; Planning, Jean-Marie Cherestal; Information, Hervé Denis; Finance, Marie Michel Rey; and Agriculture, François Severin. All the above Cabinet members are independents, although Rey and Severin were members of René Pleval's Cabinet during the first stage of Aristide's Government. Other Malval Cabinet members are: Education, Victor Benoît, Secretary-General of KONAKOM; Social Affairs, Bertony Barry, a member of Mouvement pour la reconstruction nationale (MRN) and Health, Jean Molière, a leader of the Mouvement d'organisation du pays (MOP).

3. Suspension of sanctions

185. Pursuant to the Governors Island Agreement, immediately after the designation and confirmation of Prime Minister Malval, the Secretary-General of the United Nations asked the Security Council to suspend the sanctions adopted under resolution 841 (1993). At the same time, the Secretary-General of the Organization of American States asked for the suspension of the embargo adopted at the Ad Hoc Meeting of Ministers of Foreign Affairs.

4. Other issues

186. At the time of writing of this report, the following very important immediate issues remain pending:

(a) The effective resignation of General Raoul Cédras and the appointment of a new Commander-in-Chief of the Armed Forces of Haiti and of the other members of the Military High Command;

(b) Replacement of Colonel Michel François as Commander-in-Chief of the Police Force;

(c) The return to Haiti of President Jean-Bertrand Aristide so that he may resume his constitutional duties;

(d) Separation of the armed forces from the police force, launching of the United Nations and OAS police training and armed forces modernization programmes, and abolition of all paramilitary groups;

(e) Execution by the Parliament of the political and legislative acts agreed in the New York Pact;

(f) International cooperation to solve the serious and urgent problems of the Haitian people; and

(g) Establishment by the United Nations and OAS of a mechanism for verifying compliance with the agreements.

5. Observations by the Special Rapporteur concerning the negotiations

187. The negotiation of a political settlement to the Haitian crisis will be especially useful in considering mechanisms for the international protection of human rights. In this case, pressure from the international community, including its global and regional political bodies, and the persistent efforts of certain internal and external groups led to a series of negotiations without precedent.

188. It is common knowledge that coups d'état have been staged, elected Governments overthrown and military dictatorships set up many times in almost every country in Latin America. The question therefore arises as to why greater international pressure was exercised in this case than in cases of coups d'état in other countries. Why was the pressure maintained long enough to force the restoration of the legitimate Government, almost two years after its overthrow? What factors, external and internal, played a part in this process of reinstatement?

189. Given the significance of this development, its importance in setting a precedent and its potential impact on the human rights situation, especially in Latin America and the Caribbean, the Special Rapporteur considers it necessary to offer a number of observations on the matter.

190. To begin with, it is important to note that in the case of Haiti, a number of factors, chiefly external in nature, created the conditions for international pressure to be exerted and maintained long enough for a political settlement to be reached.

191. In the first place, President Aristide's election, in late 1990, came at a time when the hemisphere was experiencing a move towards democracy. The electoral process in Haiti marked the completion of a series of elections which had resulted in the establishment, in all Latin American countries with the sole exception of Cuba, of new civilian Governments rendered legitimate by collective participation. That circumstance, which was applauded by the ideologues of democracy, was unprecedented in the history of the hemisphere and generated a high degree of optimism about the process of political development and respect for human rights. Thus the overthrow of President Aristide on 29 September 1991 was seen not only as an obstacle to Haiti's political progress, but also as a step backward that could trigger political regression in the region.

192. Only a few months before the coup d'état against President Aristide, the General Assembly of the Organization of American States had unanimously adopted,

at its June 1991 session in Santiago, Chile, two resolutions of particular significance. In the first, entitled "Santiago Commitment to Democracy and the Renewal of the Inter-American System", the countries of the hemisphere undertook to strengthen representative democracy as an expression of the legitimate and free manifestation of the will of the people and expressed their decision to adopt a set of efficacious, timely and expeditious procedures to ensure the promotion and defence of representative democracy. In the second entitled "Representative democracy" (AG/RES.1080/XXI-0/91), in which the States members of OAS resolved: (a) to instruct the Secretary-General to call for the immediate convocation of a meeting of the Permanent Council in the event of any occurrences giving rise to the sudden or irregular interruption of the democratic political institutional process in any of the organization's member States, in order to examine the situation, decide on and convene an ad hoc meeting of the Ministers of Foreign Affairs, or a special session of the General Assembly; (b) to state that the purpose of the ad hoc meeting of Ministers of Foreign Affairs or the special session of the General Assembly should look into the events collectively and adopt any decisions deemed appropriate; and (c) to instruct the Permanent Council to devise a set of proposals that would serve as incentives to preserve and strengthen democratic systems, based on international solidarity and cooperation. The coup d'état against the constitutional Government of President Aristide was the first sudden interruption of a constitutional process in the hemisphere following the adoption of those resolutions. Accordingly, the inter-American community had to respond to those developments. Moreover, the situation not only called for the immediate implementation of those resolutions, but also represented a challenge to the strength and effectiveness of the inter-American political system.

193. Furthermore, some Governments of the hemisphere, for various reasons, have shown special interest in finding a solution to the Haitian crisis from the outset. In addition to the fact that democratic countries now assign high priority in their foreign policies to human rights issues, certain countries have also been moved by other considerations. Thus, for example, the Government of the United States of America has an interest in the matter because of the presence in its territory of a large Haitian community, because of the well-known problem of the boat people, and because of the pressure exerted by the Black Caucus in Congress, as well as the demands of human rights and humanitarian organizations. France is concerned because of its position as the former metropolitan Power, because of the common language, because it has overseas Territories in the Caribbean, and for other reasons. Canada has been influenced by the presence of a strong Haitian community; Venezuela's interest stems from its history and its foreign policy, and the Dominican Republic's concern relates to political, geographic and economic considerations.

VI. CONCLUSIONS

194. Throughout 1993, both OAS and the United Nations, through the Special Envoy of their Secretaries-General, worked intensely to obtain a negotiated settlement to the Haitian political crisis. These efforts led to the Governors Island Agreement, implementation of which has now begun, although not without difficulties.

195. It was basically internal pressure and the Haitian military fear of being overthrown by multilateral force that led to the signing of the Agreement and the opening of a possible solution to the crisis.

196. Despite the compromise reached with the signing of the Agreement, the military continues to doubt the advisability of Aristide's return and a resumption of the democratic process.

197. Human rights violations have continued throughout the year, even after the signing of the Governors Island Agreement and the New York Pact. As this report is being written, in early October 1993, the human rights situation in Haiti can still be considered very serious: each day brings murders, abductions, beatings, abuses by elements within the military and paramilitary bodies, extrajudicial killings, arbitrary imprisonment, etc. The killing of Antoine Izméry, executed by attachés in September, highlights this situation. And many other crimes have been committed.

198. Through the paramilitary groups, the military has created an atmosphere of unrest. They have hampered action by Prime Minister Pleval's Government, prevented government officials, including members of the Cabinet and in particular the Mayor of Port-au-Prince, from discharging their duties and have committed acts of violence against the supporters of President Aristide.

199. In 1993, thanks to the skill, perseverance and extraordinary negotiating ability of the Special Envoy, and with the help of a few other domestic and foreign circumstances, the United Nations and OAS won a significant diplomatic battle with the signing of the Governors Island Agreement, the opening of the dialogue and the nomination and ratification of the Prime Minister. But these achievements are only the first step in a process that will most probably lead to a return to democracy. Specific issues lie ahead, such as separation of the police from the armed forces; the elimination of the section chiefs and paramilitary bodies; the investigation of crimes and human rights violations; the adoption and entry into force of essential legislation; the resignation or transfer of certain military leaders; the return of President Aristide; the entry into operation of assistance and international cooperation programmes, and so forth.

200. The International Civilian Mission has played a very important role in this process. Its members are serious and committed to the programme, with a vocation for service and professional skills. The Mission's presence throughout the country, despite the difficulties encountered and hostility from the military and the paramilitary bodies, has prevented worse human rights violations, aided the victims of repression and provided more detailed information on the specific problems of each area.

VII. RECOMMENDATIONS

201. The following are the recommendations of the Special Rapporteur:

(a) That the General Assembly should express its satisfaction with the agreements reached for the restoration of the constitutional Government of President Aristide, especially the Governors Island Agreement and the New York

Pact, but should also express its regret and concern at the obstacles to their full implementation;

(b) That the Assembly should express its gratitude to the International Civilian Mission, whose efforts have been fundamental both in securing the political agreements and in preventing an increase in the number of human rights violations, and urge the Mission to cooperate closely with the Special Rapporteur;

(c) That the United Nations should continue to observe and remain apprised of the human rights situation in Haiti for the purpose of recording and reporting the violations, requiring the Government to fulfil its international and constitutional obligations, helping to solve the serious problems facing Haitian society in this area and informing Governments and the organs of the United Nations and OAS of the human rights situation in the country;

(d) That the Government of Haiti should be explicitly required to honour the obligations it assumed when it ratified the International Covenant on Civil and Political Rights and other international human rights instruments;

(e) That the various groups in Haitian society should be required to honour the commitments they assumed when they signed the Governors Island Agreement and the New York Pact;

(f) That the Government of Haiti, including the executive and legislative branches, should be required, through material and technical advisory assistance provided by international agencies, to honour its pledge to conduct programmes relating to the administration of justice, prison administration, the updating of civil and criminal legislation, the separation of the police from the armed forces, the training of the police and modernization of the army, the investigation of crimes committed by the military, the authorities, the security agents and those under their orders in violation of human rights, full adherence to the 1987 Constitution and the full restoration of the rule of law which was undermined by the coup d'état of 29 September 1991;

(g) That the joint United Nations/OAS Civilian Mission should remain in Haiti for as long as is deemed necessary; that the police and armed forces training programme should also be maintained and that verification mechanisms for monitoring compliance with the agreements and ensuring the country's political and social development should be established and put into operation;

(h) That a programme for the promotion and dissemination of human rights, aimed specifically at training the military, police and prison authorities and the members of governmental and non-governmental human rights organizations, should be established, with the participation of the Inter-American Commission on Human Rights, the Inter-American Institute of Human Rights and the Special Rapporteur;

(i) That, in view of the serious and very difficult human rights situation in Haiti, international monitoring of this situation by the General Assembly and the Commission on Human Rights should continue under the agenda item "Question of the violation of human rights and fundamental freedoms in any part of the

world, with particular reference to colonial and other dependent countries and territories".

202. These are the recommendations submitted by the Special Rapporteur after taking up the mandate of the Commission on Human Rights and having visited the country, received and processed information and studied the human rights situation in Haiti throughout 1993. The Special Rapporteur deems it appropriate to continue monitoring carefully the political, economic and social situation in the country and expresses his conviction that only through aid, cooperation and international technical assistance, particularly in the fields of economic and social development and institution-building, as well as the establishment of a culture of respect for human rights, can the conditions for the future democratic process in Haiti be established.

Notes

1/ United Nations/Organization of American States, Consolidated Humanitarian Plan of Action, March 1993.

2/ United States of America, Department of State, "Country reports on human rights practices for 1992", February 1993, p. 421.

3/ Ibid., p. 3.

4/ World Organization against Torture, Geneva, 11 June 1993 (HT/110693).

5/ International Civilian Mission, press release dated 11 August 1993.

6/ Ibid.; and press release CP/93/31.

7/ Lawyers Committee for Human Rights, 23 August 1993.

8/ International Civilian Mission, press release CP/93/10, dated 5 May 1993.

9/ The Lawyers Committee for Human Rights, letter dated 23 August 1993.

10/ International Civilian Mission, press release dated 11 August 1993.

11/ Human Rights Organization Platform, Haiti, July 1993.

12/ International Civilian Mission, press release CP/93/10, dated 5 May 1993.

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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Cuba

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Cuba prepared by Mr. Carl-Johan Groth, Special Rapporteur of the Commission on Human Rights, in accordance with paragraph 11 of Commission resolution 1993/63, of 10 March 1993, and Economic and Social Council decision 1993/274, of 28 July 1993.

ANNEX

Interim report on the situation of human rights in Cuba prepared by the Special Rapporteur of the Commission on Human Rights in accordance with Commission resolution 1992/61 and Economic and Social Council decision 1993/274

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I. INTRODUCTION

1. At its forty-ninth session, the Commission on Human Rights adopted resolution 1993/63, entitled "Situation of human rights in Cuba", on 10 March 1993. In that resolution, the Commission decided to extend for another year the mandate conferred on the Special Rapporteur under resolution 1992/61 of 3 March 1992, whereby Mr. Carl-Johan Groth had been appointed Special Rapporteur.

2. In resolution 1993/63, approved by the Economic and Social Council in its decision 1993/274, the Special Rapporteur was requested to report to the Commission at its fiftieth session and to submit an interim report to the General Assembly at its forty-eighth session. The present report is in response to that request.

3. In resolution 1993/63, the Commission also requested the Special Rapporteur to maintain direct contact with the Government and citizens of Cuba, and, noting that the Government of Cuba had failed to cooperate with the Special Rapporteur, called on it to permit him the opportunity to carry out his mandate in full, in particular by allowing him to visit Cuba.

4. Pursuant to his mandate, the Special Rapporteur, on 24 August 1993, addressed a note verbale to the Permanent Representative of Cuba to the United Nations Office at Geneva requesting the collaboration of the Cuban Government and an opportunity to visit the country. To date, there has been no answer to the letter, which is reproduced in appendix I to this report. Appendix II, for its part, contains the text of a letter dated 8 October 1992 from the Permanent Representative of Cuba at Geneva addressed to the Special Rapporteur in response to a similar request for collaboration made in September 1992. That constitutes the only written communication to date from representatives of the Government to the Special Rapporteur.

5. Also pursuant to his mandate, the Special Rapporteur tried to obtain information from a wide variety of sources, and expressed his willingness to receive any person or group wishing to meet him. For that purpose, and bearing in mind that most of the sources of information on the situation of human rights in Cuba are in the United States of America, he travelled to New York and Washington from 15 to 22 September 1993, where he had the opportunity to meet individuals and representatives of the following organizations and groups: the Cuban Committee for Human Rights, the Committee to Support the Human Rights Movement in Cuba, the Cuban Women's Foundation, the Foundation for Human Rights in Cuba, Freedom House, the Cuban Workers Trade Union, Americas Watch, Areito Review, the Cuban-American Committee of New Jersey, the Cuban Christian Democratic Party, the World Federation of Cuban Political Prisoners, the Cuban Human Rights Party, the Centre for Human Rights, the Cuban Committee against the Blockade, the Puerto Rican Group against the Blockade and Inter-American Dialogue. The Special Rapporteur also had a working session in Madrid on 24 September, where he had occasion to meet representatives of the Association for Continental Peace (ASOPAZCO), the Cuban Liberal Union and a group of 13 former Cuban prisoners exiled in Spain. During the current year, the Special Rapporteur also had an opportunity to meet representatives of the Coordinating Body for Human Rights Organizations in Cuba, and received written material - in

addition to that received from the above-mentioned sources - from such sources as the Information Bureau of the Cuban Human Rights Movement and Amnesty International, as well as a number of communications sent to the Special Rapporteur by Cuban citizens residing in Cuba.

6. The situation of human rights in Cuba reflected in this report, which was finalized on 22 October 1993, is therefore based primarily on information supplied by the above-mentioned sources. Also taken into consideration were communications transmitted to the Special Rapporteur by institutions and organizations based in Cuba in accordance with current legislation.

II. CIVIL AND POLITICAL RIGHTS

7. In analysing the information received regarding the situation of human rights, the Special Rapporteur has taken as a point of reference the relevant international instruments, and in particular wishes to keep in mind two paragraphs from the Vienna Declaration adopted by the World Conference on Human Rights on 25 June 1993. 1/ Paragraph 5 reads as follows:

> "All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."

Paragraph 8, for its part, states:

> "Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In the context of the above, the promotion and protection of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached. The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world."

8. In the opinion of the Special Rapporteur, advances in the economic and social field constitute a constructive basis for advances in the field of civil and political rights. As stated in the Vienna Declaration, advances in one area of human rights, specifically economic and social rights, cannot serve as justification for serious shortcomings in the protection and promotion of another category of rights, namely civil and political rights. Given their indivisibility, advances in the two areas must be parallel, otherwise the rights to which priority has been given might in the long term be diminished by the rights formerly minimized.

A. Legal and constitutional framework

9. Certain provisions of the current Constitution are crucial to an understanding of the background to civil and political rights. Article 1 proclaims that "Cuba is a socialist State of workers", and article 5 declares that "the Communist Party of Cuba, inspired by José Martí and Marxist-Leninist in nature, the organized vanguard of the Cuban nation, is the supreme leading force in society and the State, organizing and guiding the common efforts towards the noble goals of building socialism and progressing towards the communist society". According to article 62, "none of the freedoms which are recognized for citizens can be exercised contrary to what is established in the Constitution and the law, or contrary to the existence and objectives of the socialist State, or contrary to the decision of the Cuban people to build socialism and communism. Violations of this principle are punishable".

10. While the Constitution contains several provisions aimed at guaranteeing such basic rights as freedom of speech and freedom of the press (art. 53), freedom of assembly, freedom to demonstrate and freedom of association (art. 54), and the right to file complaints with and send petitions to the authorities (art. 63), it is obvious that those rights may be exercised only when, in the eyes of the authorities, that would not involve any challenge to the status quo or to the official ideology.

11. In this connection, mention should also be made of the constitutional precepts governing mass organizations. Article 6 declares that "the Union of Communist Youth, an organization of Cuban youth in the vanguard, is recognized and encouraged by the State in its primary task of promoting active participation by the young masses in the building of socialism". Likewise, article 7 stipulates that "the Cuban Socialist State recognizes and encourages the mass social organizations [...] which comprise various sectors of the population, represent the specific interests of the same and involve them in the tasks of building, consolidating and defending socialist society". These precepts establish beyond all doubt the ideological framework within which new associations may be formed. Any association which, in the opinion of the authorities, fails to meet that standard will have its application for registration denied or, as happens more often in practice, ignored.

12. A logical corollary to those constitutional precepts is the punishment of any act that can in any way be contrary to the status quo. The 1987 Penal Code thus has among its objectives "helping to develop among all citizens an awareness of the need to respect the socialist legal order, do their duty and properly observe the norms of socialist coexistence" (art. 1). The Code also specifies that "the purpose of the penalty is not only to punish the offence, but also to provide re-education in the principles ... of respect for the norms of socialist coexistence" (art. 27). The Code goes on to identify a number of acts as offences against the internal security of the State, stipulating heavy prison sentences. In addition, under article 44, the court may, at its discretion, order confiscation of property as punishment for offences against the security of the State. Some of those offences, e.g. rebellion and sedition, involve the use of violence or force of arms. Others, however, such as enemy propaganda, do not involve the use of any violent means. Among those liable to punishment is any person who, by means of spoken, written or any other form of propaganda, incites others to take action against the social order or the

socialist State, or who produces, distributes or possesses such propaganda. Furthermore, in the context of offences against the security of the State, preparatory acts are punishable under article 12. Article 72 of the Code deals with the concept of "dangerous state", which it defines as "a person's special proclivity to commit offences as demonstrated by conduct that is manifestly contrary to the norms of socialist morality"; it provides that any person who might develop a proclivity to commit offences, because of connections or relations with persons who are potentially dangerous to the social, economic and political order of the socialist State, shall be warned by the police authorities.

13. The Penal Code's definition of other acts as offences - e.g. unlawful association, assembly and demonstration (articles 208 and 209, which lay down penalties for associate or affiliate members, as well as promoters or directors of unregistered organizations), possession of illegal printed matter (art. 210) or contempt (art. 144) - is also likely to be applied to conduct which in any way implies the expression of opinions critical of the official ideology or of the actions of the authorities.

14. To illustrate this point, the Special Rapporteur would like to mention the provisional conclusions reached by the prosecutor in the October 1992 trial on the charge of enemy propaganda of Sebastián Arcos Bergnes, a leading member of the Cuban Committee for Human Rights, 2/ in order to show what type of action may be punishable:

> "Sebastián Arcos Bergnes, without regard for the law, sent information to stations based outside the country, for the purpose of contributing to the campaign to discredit Cuba.
>
> "In breach of the disciplinary code of the Combinado del Este Prison, he gave handwritten notes to counter-revolutionary inmates, with the aim of helping to incite opposition to the Cuban social system.
>
> "During a search at the Combinado del Este Prison on 11 December 1991 ... pieces of paper with handwriting in ink ... were found on the prisoner. On one piece of paper ... the accused, Sebastián Arcos Bergnes, had written, and I quote: 'We are making continual demands for democratic changes to the regime, and we are trying to develop the necessary national consciousness so as to be able to bring about those changes through peaceful, but firm, civil resistance among the population. That is our main task, our educational task, our present task ... then demand lunch, transport, private car; then amnesty, freedom of expression, freedom of association and, finally, democracy!' In other words, use systematic propaganda to promote action against our social system."

B. Most frequent patterns of violations and specially vulnerable groups

15. On the basis of direct testimony, contacts with analysts of the Cuban experience, and abundant written documentation, the Special Rapporteur has been able to note the excessive control exerted over the population via the

institutional machinery. This has resulted in a systematic violation of, inter alia, the principle of non-discrimination on political grounds and the right to freedom of opinion and expression. This control is applied in the day-to-day life of every citizen - in the workplace, at educational institutions and even at the neighbourhood level. Education itself also has an ideological orientation, to judge from the Constitution, article 38 of which states that parents have a duty to contribute actively to the all-round education and training of their children as useful citizens prepared for life in a socialist society, whereas article 39 stipulates that the State bases its educational and cultural policy on Marxist ideology, and promotes patriotic education and communist training of the new generations.

16. According to the information received, the so-called "cumulative school record" and "employment record" make it possible to monitor the ideological integration of individuals virtually throughout their lives, by including not only purely academic or employment-related material, but also information regarding their membership in mass organizations, functions performed in such organizations, level of activism, ideological features of family members, misconduct, etc. Often individuals are expelled from educational institutions, dismissed from their jobs or subjected to some form of discrimination for expressing, in some way, views inconsistent with the official ideology.

17. The Committee of Experts on the Application of Conventions and Recommendations, of the International Labour Conference, considered some of these questions in connection with the application of Convention No. 111 concerning Discrimination in respect of Employment and Occupation, ratified by Cuba in 1965, in the light of comments made by non-governmental organizations alleging discrimination based on political opinion, in access to education, training and employment. Since this Committee is a body with which the Government has maintained a dialogue, the Special Rapporteur considers it important to make full references in its consideration of the case of Cuba.

18. Among other comments, the Committee of Experts pointed out in 1992 that the Regulations for the Application of Employment Policy, like the Labour Code, defined the labour record as a document that contains data and particulars of each worker's job and that the employing agency is under an obligation to prepare, update and maintain the record. Yet according to resolution No. 590/1980 of the Committee on Labour and Social Security (CETSS), distinctions which do not constitute a labour merit but which are conferred by such bodies as mass organizations or official institutions and which express the "revolutionary attitude maintained by the worker outside his work centre" may be included in the labour record. The Committee considered that those provisions were not in conformity with the provisions of the Convention concerning the Elimination of any Discrimination Based on Political Opinion, and that the inclusion in the labour record of distinctions conferred for a "revolutionary attitude" outside the labour environment might constitute discrimination. 3/

19. In its 1993 report, the Committee of Experts took note of the information supplied by the Government to the effect that the Ministries of Education and Higher Training had undertaken studies with a view to removing from the student's school record elements which did not involve academic matters, and that discussions were being held on a draft regulation for the application of employment policy, which defined the content of the cumulative labour record and

would indicate clearly that it could no longer contain information on merits or demerits. The Government had also indicated that resolution No. 590/1980 had been repealed, and that the Government was conducting an inquiry on the internal rules that had been established by some enterprises with a view to eliminating from files all information relative to moral attitudes or social conduct of workers, which were extraneous to the employment relationship. 4/

20. In that same 1993 report, the Committee of Experts referred furthermore to possible discrimination against journalists on ideological grounds, stating in particular:

> "In previous direct requests, the Committee had noted that section 3 of resolution No. 50, of 21 September 1987, respecting the parameters for evaluating the performance of workers in journalism includes the political and ideological scope of the work performed. The Committee noted that the outcome of the evaluation affects the wage level of the workers in question since an evaluation that is not 'positive' has the effect of lowering the worker's wages ... Section 28 provides that as a result of a non-positive biennial evaluation the employment relationship of the person concerned may be terminated. The Committee notes the Government's reply that journalists' performances are evaluated solely on the basis of their qualifications and the results of their work. Given, however, that the text of this resolution makes reference to ideological and political elements which may affect both access to, and security of, employment and conditions of employment, the Committee asks the Government to provide information, in its next report, on the measures taken or envisaged to remove these elements from the criteria for evaluation of journalists, set forth in resolution No. 50, so as to bring it into line with the stated practice of judging performance on the sole bases of qualifications and results." 5/

21. Another form of social and political control is exercised by the direct harassment of security agents, or through arrest and sentencing in the courts for offences defined by law. Here, the most vulnerable sector is the one made up of individuals belonging to groups that have emerged, without formal legal recognition, for the purpose of defending human rights or labour union rights and in some cases for a political purpose. The Special Rapporteur sees these groups as characterized above all by their zeal to use only peaceful means to achieve their ends. In many cases, they have applied to the authorities for inclusion in the Ministry of Justice's register of associations, although the requests have as a general rule remained unanswered. At the present time, there seem to be about 100 such associations and groups, according to a list recently received by the Special Rapporteur, each of them varying in their number of members, date of establishment or orientation.

22. As for the right to establish and join trade union organizations, the Special Rapporteur had mentioned in his previous report to the Commission on Human Rights 6/ that the Committee on Freedom of Association of the International Labour Organization (ILO) had examined a complaint relating, inter alia, to the impossibility of establishing independent trade unions and the monopoly exercised in that regard by the Central Organization of Cuban Workers (CTC), the official trade union, and that the Committee had formulated provisional conclusions on the case. As part of its recommendations, the

Committee had urged the Government to send precise observations on the failure of the Ministry of Justice to reply to the request for registration and recognition of legal personality submitted by the General Union of Cuban Workers (UGTC). In the course of its May 1993 session, the Committee took up the complaint again in the light of the reply furnished by the Government, and reached the following conclusions:

> "280. As regards the allegation concerning the Ministry of Justice's failure to reply to the request for registration and recognition of legal personality submitted by the General Union of Cuban Workers (UGTC) (its rules and a list of some of the members' names had been enclosed by the complainant organization), the Committee notes the observations made by the Government according to which a request for registration had not been submitted, merely a request to the Ministry of Justice for a 'certificate of recognition' that there was no association of workers with the same name in that department and that, subsequently, Mr. Gutiérrez asked the Ministry to discount the aforementioned request for registration. In the Committee's opinion, it seems that 'certificate of recognition' was requested by Mr. Gutiérrez with the express aim of being able subsequently to request 'legal registration' for the new trade union, and he thus seemingly embarked on a procedure obviously with the aim of registering a new trade union body. The Committee observes, moreover, that from the documentation included by the Government it seems that, although Mr. Gutiérrez in effect asked for the UCTC registration application to be discounted, this was merely due to the fact that he wished to change the name of the association to the 'Union of Cuban Workers (USTC)'.
>
> "281. In the circumstances, the Committee concludes that the General Union of Cuban Workers was set up over a year and a half ago (according to the Government, it is now called the Union of Cuban Workers (USTC)), and has still not been registered. Furthermore, although it notes that the Government's declarations concerning the UGTC's lack of representativity, the Committee must point out that the fact that an organization has only a small number of members is not a good enough reason for refusing registration. In the circumstances, the Committee once again urges the Government to make an immediate pronouncement on the registration of the General Union of Cuban Workers (UGTC) (which according to the Government is now called the Union of Cuban Workers (USTC)), bearing in mind that, under Article 2 of Convention No. 87, workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their choosing without previous authorization. The Committee requests the Government to keep it informed of any measures adopted in this regard." 7/

23. A great many of the complaints received by the Special Rapporteur concern persons, in some way linked to human rights, trade union or political groups, who indicate that they were visited by State security agents at their homes or workplaces and threatened with loss of employment, or prosecution, or so-called "acts of repudiation" on the part of the "rapid response brigades" and, in some cases, were assaulted in the street by unknown person or warned to leave the country. Examples include the cases of Aida Rosa Jiménez and Asalia Ballester Cintas, of the Democratic Civic Party; or of René Contreras Blanch, of the Cuban Human Rights Party, who was beaten on

16 March 1993 in the centre of Havana by members of the police, and suffered head injuries. In the view of the Special Rapporteur, the idea of allowing groups of persons without legal identity or responsibility to "administer justice" is something that cannot be accepted in any society.

24. In other cases, the persons concerned are summoned to appear before the police where they are warned or held in custody for a short period and interrogated. Threats of reprisals against the family are also frequent, as well as house searches. For example, the case was reported of Robert Trobajo Hernández, Secretary of Cuba's General Union of Workers in Havana province and member of the National Commission of Independent Trade Unions, who was arrested on 5 March 1993 in the Güira de Melena district and taken to the police station at San Antonio de los Baños, where he was held for four days before being transferred to the Department of Technical Investigations (DTI) at San José de las Lajas, where he remained for three more days. It was also reported that he was told he would be prosecuted for the crime of enemy propaganda if he continued to oppose the regime and that he had lost his job as a result of the arrest.

25. Other cases reported are those of Rolando Roque Malherbe, member of the Socialist Democratic Movement, who was warned on 23 September 1993 not to hold in his home a meeting planned for the following day and who remained in custody until 27 September: at the meeting, which was held anyway, there was an act of repudiation; Félix Bonne Carcacés, coordinator of the Cuban Civic Movement, who was summoned on 27 September 1993 to the police station at Río Verde, Rancho Boyeros municipality, and later taken to the DTI detention centre at the intersection of 100 and Aldabó; various members of the National Council for Civil Rights in Cuba and the Cuban Pro-Human Rights Party (Lázaro Fernández Hidalgo-Gato, Enrique López Valdés, Pedro Pablo Guzmán Cabrera, Sergio Rodríguez Valle, Sergio Llanes Martínez, Alcides Aguilar), who were arrested in early November 1992 at San Antonio de los Baños; Omar Moisés Ruiz Hernández, who was interrogated for three days in July 1992 at the Santa Clara State Security headquarters in connection with complaints that had been sent abroad concerning Cuba's problems; Carlos Cordero Páez, a member of the National Council for Human Rights, who was arrested 5 October 1992 when, at the entrance to the Havana Provincial Court where the trial against Sebastián Arcos Bergnes was to be held, he displayed a placard with the words "Freedom for Sebastián Arcos"; he was beaten and taken to the police station at the intersection of Cuba and Chacón, released at about 11 p.m., once the trial had ended; Ana Daisy Becerra, a member of the Committee of Mothers for Granting Amnesty to Political Prisoners, who was arrested on 13 December 1992 and taken to the Picota police station in Old Havana, and was threatened with prosecution for enemy propaganda because complaints about human rights violations in the Combinado del Este Prison had been found in her home; Paula Valiente, President of the Association of Mothers for Dignity, who was interrogated several times in 1992 and 1993 and threatened because of her activities in connection with political prisoners and for reporting human rights violations abroad; other members of her organization such as Hilda Cabrera, Berta Galán and Victoria Cruz and members of her family have also been threatened and interrogated; María Valdés Rosado, coordinator of Democratic Civic Action, and Alicia Suárez, of the Cuban Christian Democratic Movement, who were arrested at Havana on 7 May 1993 and released two days later; and Caridad Duarte Gómez, of the Organización Juvenil Martiana, who was interrogated

for several hours on 4 August 1993 at the municipal police station of Old Havana and on 19 May 1993 at the Picota and Paula station.

26. In another group of cases the persons concerned were tried and sentenced to prison terms of varying lengths. According to reports, during the first stage of the investigation the detainee is often held on security police premises for several months, sometimes in sealed cells from which he is taken only to be repeatedly interrogated at any time of day or night, with extremely limited access to visits from his family or lawyer. The Special Rapporteur received information recently on the following specific cases, some of which occurred in 1992:

(a) Pablo Reyes Martínez, a member of the National Civic Union, was sentenced in October 1992 by the Havana Provincial Court to eight years of imprisonment and confiscation of all his property for the crime of enemy propaganda because, according to the verdict, he had engaged in "the dissemination of false information about alleged human rights violations in Cuba and other economic aspects, reflecting negatively on the masses, which had been provided to him by various discontented people and not verified by the accused, and were clearly designed to discredit the work of the revolution, and the prestige of its leaders, and ultimately to undermine the economic, political and social foundations of our system";

(b) Luis Enrique Grave de Peralta Morel, a former professor of physics who was expelled from the Oriente University for having left the communist party, and Arquímedes Ruiz Columbié, Robier Rodríguez Leiva and Carlos Orue Caballero, researchers of the Cuban Academy of Sciences, were arrested on 13 February 1992 at Santiago de Cuba in connection with the establishment of a political movement called "New Generation" that was critical of government policy. For the crime of rebellion they were later sentenced to 13, 8, 10 and 8 years of imprisonment, respectively;

(c) Bárbara Celia González Toledo, a qualified economist and public accountant, was convicted of contempt on 15 July 1992 by the Ciego de Avila Provincial Court and sentenced to 18 months of imprisonment and loss of employment for having expressed critical views in private about the Cuban leaders;

(d) Juan José Moreno Reyes, Luis Reyes Reynosa, Benigno Raúl Benoit Pupo, Eduardo Guzmán Fornaris, Enrique Chamberlays Soler, Lorenzo Cutiño Bárzaga, Adolfo Durán Figueredo, Wilfredo Galano Matos, Rafael Rivera Matos, Maritza Santos Rosell, Ramón Mariano Peña Escalona and Ramón Fernández Francisco were sentenced to prison terms of between 5 and 13 years for crimes of rebellion and other acts against State security in March 1993 by the Santiago de Cuba Provincial Court. The acts for which they were charged involved holding meetings and printing and distributing flyers in various municipalities of Holguín province criticizing the Government. Seven other people received sentences of between one and two years in relation to the same incidents;

(e) Juan Francisco Fernández González, a doctor, was arrested on 18 March 1992 in Havana and tried for the crime of enemy propaganda. During the trial, held on 15 December 1992, the charges were changed to rebellion, and he was sentenced to 10 years of imprisonment. In the course of one year, the place of detention was changed no less than six times. In the same case (38/92) the

Havana Provincial Court also sentenced Eduardo Prida, a qualified psychologist, and Mario Godínez, an electrician, to 15 and 12 years of imprisonment, respectively;

(f) Amador Blanco Hernández, president of the José Martí National Human Rights Commission, was arrested on 10 December 1992 at his home at Caibarien, Villa Clara, and taken to the State Security Department at Santa Clara. Along with Joel Mesa Morales, he was charged with enemy propaganda; the prosecutor requested a penalty of eight years of imprisonment. In his provisional conclusions the prosecutor mentioned among the charges that the accused "had been engaged in a propaganda campaign in order to discredit the Cuban revolution through the collection of numerous false complaints, consisting of alleged maltreatment and physical attacks, persecution, injuries and threats to various persons and prisoners by members of the Ministry of the Interior in general and military and rehabilitative personnel at the penitentiary centres in particular, sent through different channels to different subversive outlets". In 1982, Mr. Blanco Hernández had been dismissed from his post as professor at the Central University of Las Villas for having been critical of government policy;

(g) Alfredo García Quesada, electrician and student at the University of Camagüey, was arrested on 23 April 1993 in the Guayabal district, Las Tunas, for distributing flyers reading "Down with Fidel" and for painting those words on the body of a white horse. He is now serving a five-year term in the prison at Típico de Las Tunas.

27. The Special Rapporteur was also informed of the following cases of persons who were formally accused of enemy propaganda or similar crimes who are being held in custody pending trial: Luis Gustavo Domínguez Gutiérrez, from the group Peace, Progress and Liberty, accused of enemy propaganda because he sent a letter to the Government in which he renounced the medals awarded to him for his participation in the Angola campaign; Pedro Armentero Lazo, imprisoned in the Combinado del Este Prison; Orfilio García Quesada, held in El Guayabal district, Victoria de las Tunas, in May 1993 for having participated in a process of collecting signatures calling for political change; Roberto Alvarez San Martín, a well-known writer and journalist, banned from practising his profession in February 1992; Domiciano Torres, a former professor of architecture, who had been expelled from his department at the Armando Mestre de Guanabacoa Technological Institute in 1992, and vice-president of the Democratic Civic Party, arrested on 13 August 1993 and taken to the State Security offices at Villa Marista; at the time of his arrest he is alleged to have been brutally beaten.

28. Loss of employment is also common, often accompanied by threats and campaigns to discredit the victim. This measure creates particular problems for people who are unable to find any other work corresponding to their qualifications, because the State is the sole employer; the entire family unit then suffers the consequences. The following are some of the cases communicated to the Special Rapporteur:

(a) Rolando Díaz Acosta, expelled in October 1992 from his post in José Martí National Library, in District 10 October, for being one of a group of intellectuals who signed a letter to the Heads of State and Government at the Second Ibero-American Summit in which they drew attention to the need for

changes in the country. For the same reason, he was also evicted from the house where he lived;

(b) Guillermo Fernández Donates, expelled in October 1992 from his civil engineer post in Construction Project Company No. 2 at Havana [Empresa de Proyectos de Construcción no. 2 de La Habana] for revealing his membership in the Corriente Cívica and the Cuban Committee for Human Rights; in February 1993, he was also expelled from Havana University where he was a law student and from the sports centre he frequently visited. His wife, Euridice Sotolongo Losada, was forced to resign from the same technical centre;

(c) Heriberto Alejandro Bario Lorences, expelled from his engineer's post at the Havana Institute for Sugar Projects [Instituto de Proyectos Azucareros] in June 1992 for sending information abroad concerning the arrest of his colleague, Mariano Gort, on a charge for disseminating enemy propaganda;

(d) Leonardo José Rodríguez Pérez, expelled from his research post at the Havana Centre for Metallurgical Research [Centro de Investigaciones Metalúrgicas de la Habana] in January 1993 for signing the above-mentioned letter to the Ibero-American Summit.

29. The Special Rapporteur also received information on the following cases of university professors expelled under Decree-Law number 34/1980 which enables the heads of the Municipal Management of Local Authorities of the People's Power [Direcciones Municipales de los Organos Locales del Poder Popular] to dismiss staff members from institutions of higher learning for allegations of acts contrary to socialist morality and the ideological principles of society:

(a) Reinaldo Cosano Alén was expelled from his teacher's post in the "Jésus Suárez Gayol" faculty of Guanabo in Havana in September 1992 for his work with the Cuban Committee for Human Rights. In the official document confirming his expulsion, Mr. Cosano's activities are rated inappropriate for the work of an educator owing to the serious repercussions which his personality creates on the training of Cuban children and young people;

(b) Ramón Rodríguez Ríos lost his teacher's post at a centre in San Antonio de los Baños and was conclusively expelled from the teaching profession in 1992 after it was confirmed, pursuant to the resolutions on expulsion, that "he was a full member of a human rights nucleus", this being deemed "contrary to socialist morality and the principles of our society";

(c) Félix Díaz Cáceres, a physical education teacher at Pinar del Río, was expelled from his post in May 1992 for openly opposing the expulsion of a group of university professors from their chairs because they had written a declaration of principles in which they asked for political changes; 8/ on 3 August of that year, he was summoned to State Security premises where he was interrogated on the "Open letter of Cuban professionals to the Ibero-American Summit"; in September, he was arrested and spent 18 days in the State Security Department at Pinar del Río accused of disseminating enemy propaganda.

30. It is the opinion of the Special Rapporteur that these recent expulsions do not correspond to the statements below from the Committee of Experts on the Application of Conventions and Recommendations of the International Labour

Office in its investigation of the application of Convention 111 (Discriminatory Practices in Employment and Occupation) included in its 1992 report:

> "The Committee takes note of the Government's declaration whereby the provisions of decree-law number 34/1980 ... do not have practical application today. The Committee hopes that, as indicated by the Government, these provisions will be harmonized with the Convention at the time revision of the above laws is begun. Furthermore, the Committee again asks the Government to supply the text of attached resolution no. 2, dated 20 December 1989, from the Ministries of Education and Higher Education dealing with the reinstatement of workers in the teaching field to whom decree-law number 34/1980 was applied". 9/

In its 1993 report, the Committee again requested the Government to provide a copy of resolution number 2, dated 20 December 1989. 10/

C. The right to enter and leave the country

31. Restrictions placed on a person's exercising the right to leave the country, as described by the Special Rapporteur in his previous report, 11/ continue to be applied. The Special Rapporteur is pleased to learn that some persons holding visas to travel or reside abroad, whose cases he had learned about in 1992, had finally received authorization to leave the country. He did not, however, see this as a reflection of significant change in the government's policy in this area as he was still receiving information on other cases in which authorization to leave had been refused. Such is the case of Mrs. Nydia Cartaya Medina and her four daughters who have not been given authorization to leave the country since the time when her husband was given asylum in the United States in 1985.

32. The Special Rapporteur also considers that cases of human rights activists - some of them in prison - being harassed by the authorities to leave the country, constitute a violation of that right. In that connection, reports have been received on cases such as those of Sebastián Arcos Bergnes or Yndamiro Restano, mentioned later, or of Rodolfo González González of the Cuban Committee for Human Rights. In the case of Francisco Chaviano González of the National Council for Human Rights in Cuba, authorization for his three children, who hold visas for entry to the United States to leave the country, was made conditional on Mr. Chaviano's leaving the country also.

33. Moreover, the stream of people trying to leave the country illegally by any means continues unabated. According to various sources, approximately 25 people a day roughly estimated, make the attempt. Of these, only one in four succeeds; two, facing physical danger or arrest, are forced to return; and one is killed in the attempt. According to another estimate, 2,500 people reached United States coasts in this way in 1992 and, from the beginning of the current year up to the end of August, some sources estimate that 1,600 have reached the United States. Other sources, however, place the figure at about 2,000. They point out that though political reasons are one of the underlying causes for these numbers, the main impetus for this emigration is the economic situation with its concomitant lack of opportunity and options. As a result, during the last few years, the number of people attempting to emigrate has significantly risen. In

view of the enormous risk to life which this entails, the Special Rapporteur does not favour people abroad encouraging Cubans to attempt this method of leaving the country.

34. Several reports of Cuban coastguard patrols firing on people trying to reach the United States naval base at Guantánamo by sea, and sometimes even by land, in order to seek asylum have been received. According to those sending in reports, this policy should be all the more strongly criticized because the use of force is both excessive and unnecessary when arrest is the only purpose. Incidents of excessive force used at other coastal points against people trying to leave the country by their own means in homemade boats have also been reported along with other cases of boats manned by United States citizens or permanent residents in the United States that approach the Cuban coasts with the purpose of picking up Cuban citizens.

35. Persons arrested while trying to leave the country continue to be prosecuted under article 216 of the Criminal Code. Moreover, the act of accumulating over time material to be used for leaving the country and transferring it to a prearranged place is considered a crime. Some of these cases were reported to the Special Rapporteur, for example, that of Alejandro Joaquím Fuertes García, sentenced on 10 May 1992 to five years' deprivation of liberty for illegal exit by the provincial court of Santa Clara after a trial at which his defending attorney was not present. At the time of his arrest by security agents of Santa Clara State he was severely beaten, causing, among other things, kidney damage and reduced vision in one eye.

36. Lastly, the Special Rapporteur considers positive the action taken by the Cuban authorities to increase the number of Cuban citizens residing abroad who can visit the country. Although in the past only 90 visas per week have been granted, apart from the humanitarian visas granted in cases of grave illness or death in the family, under the new measures announced at the end of July 1993, the Cuban authorities may issue 100 tourist day visas to Cubans who left the country more than five years ago.

D. The right to an effective recourse

37. The information received by the Special Rapporteur includes may complaints concerning the lack of independence of the judiciary, which is subordinated to the executive and legislature by the Constitution itself. Thus, article 121 provides that: "the courts constitute a system of State organs structured to be functionally independent from other systems and subordinated by rank to the National Assembly of People's Power and the Council of State". The Office of the Attorney-General of the Republic is similarly subordinated, under article 131 of the Constitution, to the National Assembly of People's Power and the Council of State. The Attorney-General of the Republic is elected by the National Assembly of People's Power (art. 129), to which he must render an account of his work (art. 130) and receives direct instructions from the Council of State (art. 128). Under the Constitution, articles 66, 68 and 121 of the Organization of the Judicial System Act 12/ provides that a professional judge, lay judge or examining magistrate must be "actively involved in the revolution", an involvement which is required from the very beginning of legal studies. In addition, article 4 of the same Act includes among the main goals of the courts'

activity: "raising the social legal consciousness in the direction of strict compliance with the law and including in its decisions considerations which will educate the citizens in the conscious and voluntary observance of their duties of loyalty to the country, the cause of socialism and the rules of socialist coexistence".

38. As concerns the role of attorneys, it was stated that their basic duty is not to defend the interests of their clients, as these are subordinated to the interests of the system. Persons who had been sentenced for political offences told the Special Rapporteur that they met their defence attorney only at the time of their oral hearing and that the defence consisted only of presenting some standard mitigating circumstances rather than proving the innocence of the accused, who could always be certain in advance that he would be convicted. They also said that in a large number of cases neither the person concerned nor his family received a copy of the verdict, far less sometimes even of the accusation, of which the accused received only, at the moment of trial, the oral version given by the investigating authority, that is, under the Cuban procedural system, the police, with respect to the legal characterization of the offences he was accused of. Similarly, articles 160 and 161 of the Code of Criminal Procedure, which refer to the form in which a statement by the accused is to be taken during the preparatory phase of the procedure in the appropriate police unit, does not give the accused the right to make a statement in the presence of a counsel for the prosecution, whether of his choice or assigned.

39. On a number of occasions, the Special Rapporteur received complaints concerning the way in which trials for offences against State security were conducted: discriminatory treatment of the witnesses for the defence and the prosecution, an excessively aggressive attitude on the part of the investigator and lack of impartiality by the judge in the conduct of the hearings seem to be habitual practices.

III. CONDITIONS IN THE PRISONS

40. It is reported that food and hygienic conditions as well as the lack of medical attention continued to be alarming and have created many health problems affecting the prison population. Anaemia, diarrhoea and skin and parasite diseases as a result of contaminated water seem to be common ailments in most of the prisons, and in some, like those of Manacas and Combinado del Este, cases of tuberculosis have been recorded. This situation has caused the death of some prisoners, as in the case of Alcides Pérez Rodríguez, imprisoned before trial in the provincial prison of Ariza, who died on 5 March 1993 in Cienfuegos provincial hospital as a result of a generalized infection, or that of Juan Enrique Olano Pérez, who was serving two years of confinement in the Quivicán prison and who died in the Hermanos Ameijeiras hospital, to which he was taken when he was already in critical condition.

41. Prisoners who had protested in some way against their treatment or who had refused re-education, meaning - according to the information received - political and ideological instruction, had also been subjected to reprisals such as beatings, confinement in punishment cells (which are extremely small, have sealed doors and in which the prisoner can remain for months without seeing daylight), transfer to another prison, usually far from his family's place of

residence, suspension of family visits or the denial of medical treatment. Thus there are cases such as that of Luis Alberto Pita Santos, President of the Association for the Defence of Political Rights, held in Kilo 8 prison of Camaguey, who had been struck repeatedly; before his transfer to that prison, at the beginning of 1993, he was in Boniato prison in Santiago de Cuba, where he appears to have spent several months in punishment cells and where he was beaten in December 1992, as a result of which his arm was fractured; his cellmate, Jesus Chambes Ramírez, who was also beaten in the same incident, suffering a broken cheekbone and hematomas in various parts of his body. It is also reported that some prisoners were transferred or confined in punishment cells because written complaints about prison conditions were discovered, as in the case of Arturo Suárez Ramos, a member of the Cuban Committee for Human Rights, who was transferred from the Combinado del Este Prison at Boniato and locked in a punishment cell for complaining about the condition of the prisoners. Alberto Aguilera Guevara, Roberto Muré, Luis Grave de Peralta, Jesús Chembar, Ibrán Herera Ramírez, Enrique González, Rodolfo Gutiérrez and Robier Rodríguez, who were confined in the Boniato prison, were beaten and transferred to the Kilo 8 maximum severity prison of Camaguey on 12 February 1993 for engaging in a hunger strike in protest against their ill-treatment.

42. The Special Rapporteur has received material complaining of the use of psychiatry for other than strictly medical purposes, but does not have enough solid information to state that this takes place. On the other hand, the Special Rapporteur, in his conversations with former prisoners, observed that a fear of being subjected to this kind of treatment seems to exist among the prison population.

43. The number of persons serving sentences for political offences is difficult to estimate. Some sources place the number between 2,000 and 5,000 persons, including those sentenced for illegal departure. The Cuban Committee for Human Rights gave the Special Rapporteur a list of 602 prisoners who were serving sentences in 1992 for political offences. Of those, 342 were sentenced for the offence of disseminating enemy propaganda, 83 for sabotage, 31 for piracy, 52 for contempt, 15 for terrorism, 14 for espionage, 14 for offences against State security, 16 for rebellion, 15 for illegal association and the remainder for miscellaneous offences. A small number of prisoners were recently set free on the condition that they leave the country. Others, such as Sebastián Arcos Bergnes, who is serving a sentence of four years and eight months in the Ariza prison of Cienfuegos and Yndamiro Restano, President of the Harmony Movement, who was sentenced to 10 years, have refused the offer.

IV. CONSIDERATIONS CONCERNING THE ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

44. The report of the group of ambassadors who visited Cuba pursuant to Commission on Human Rights decision 1988/106 sums up the comments made by the representatives of the Government of Cuba on the enjoyment of economic, social and cultural rights in the country. The Special Rapporteur duly recalls some of those comments:

"The Minister of Labour explained to the group that the State guaranteed to all Cubans the right to work. There was no unemployment in Cuba and the existing social security system protected mothers, children and elderly people and looked after people who were temporarily or permanently sick or injured.

"...

"In his talks with the group, the President of the Council of State stated that the achievements of the Revolution in the social sphere had been outstanding and that, as a result of the efforts made by the regime in the areas of preventive medicine, mother and child care, and nutrition, his Government had saved the lives over the last 30 years of approximately 300,000 children who would not have survived if substantial changes in Cuban social policy had not been introduced. He compared the experience of Cuba in this area to that of other countries of the Third World, where as a result of the unjust international economic order many children were dying of hunger every day.

"...

"The Minister of Health said that average life expectancy was currently 74.6 years (as compared with 58 years in 1965 and 52 years in 1959), which placed Cuba on a level comparable with that of many developed countries. He mentioned that other achievements in the area of public health were the treatment of contagious diseases, advances in the area of nutrition and the eradication of malaria, diphtheria, tuberculosis, polio, meningitis and tetanus for children and other common infantile epidemics, with a consequent drastic reduction in the infant mortality index. ... He also mentioned that those efforts with respect to health would have failed if adequate attention had not been paid to the training of future doctors, nurses and specialized technical staff. Other indications of the efforts being made by the regime in the area of health was the current encouragement to applied scientific research, especially in the spheres of genetics and tropical diseases, as well as promotion of the industrial production of medical equipment.

"In talks with the group, the Minister of Education [said that] ... the school-attendance stage ran from 6 to 16 years of age. The percentage of children of those ages registered was 93 per cent, the percentage rising to 98 per cent for the category of 6 to 12 years of age. The whole school system was compulsory and free of charge.

"With regard to university education, the Minister of Higher Education informed the group that there had been 15,000 university students in Cuba in 1959, 35,000 in 1971 and 85,000 in 1976, whereas the current figure was 310,000, or 3 per cent of the total population. ..." 13/

45. Certain statistics in the Human Development Report 1993 issued by the United Nations Development Programme (UNDP) confirm some of the data given by the Cuban authorities:

(a) Life expectancy at birth for 1990 was 75.4 years as against 63.8 in 1960;

(b) Infant mortality (per 1,000 live births) was 14 infants in 1991 as against 65 in 1960;

(c) The percentage of the population with access to health services (1987-1990) was 100 per cent, in both urban and rural areas;

(d) The number of inhabitants per doctor (1984-1989) was 530;

(e) The adult literacy rate for 1990 was 94 per cent as against 87 per cent in 1970;

(f) The combined primary and secondary school-enrolment rate (1987-1990) was 95 per cent as against 76 per cent in 1970.

46. A report prepared and sent to the Special Rapporteur by the Christian Democratic Party (PDC) of Cuba abroad takes stock of the achievements of recent decades in the social sector, which most of the population sees as a positive factor.

47. In the educational sector, the report mentions that the Cuban Government has managed in 33 years to set up an educational infrastructure. Day-care centres, schools, secondary schools, pre-university institutions, technical institutes and universities exist throughout the country. Teachers and professors have been trained in large numbers, and a series of laws have been put in place that foster education as one of the basic tasks of the Government. Furthermore, education is virtually free of charge.

48. In the health sector, the PDC report indicates that the Cuban Government has created a country-wide infrastructure, not only as concerns hospitals but also the training of doctors, nurses and all health personnel. However, many of the achievements, such as the low infant-mortality rates, the high life expectancy and the eradication of diseases, are being severely compromised by the economic crisis the country is undergoing. Surgical equipment is one of the items most affected. Only emergency operations are being carried out and there is a shortage of medicines and laboratory materials. The shortage of medicines and poor nutrition are producing vitamin deficiencies and serious nutritional deficiencies.

49. In the social security sector, the report recalls the adoption in January 1980 of Act No. 24, which set up the social security system, consisting of two regimes: the social security system and the social welfare system. The former offers protection to workers in case of ordinary or on-the-job illness or accident, maternity, disability and old age. If a worker dies, his family is protected. The social welfare system gives special protection to the elderly, persons incapable of working, and in general all whose essential needs are not insured or who need protection because of their living or health conditions. Some of the established benefits include:

(a) Old age pension, to which men are entitled at the age of 60 and women at 55;

(b) Disability pension;

(c) Death benefit; to which are entitled widows, widowers over 60 or incapacitated widowers who were dependent on the deceased worker, children, including adopted children, under 17, parents, including adoptive parents;

(d) As women's benefits, an 18-week paid maternity leave established by law for working mothers.

50. The same report indicates that, as the Cuban authorities stated, the social security system has remained unchanged despite the present economic crisis.

51. The Special Rapporteur believes that the considerations included in both the report of the visiting mission to Cuba in 1988 and the report of the Christian Democratic Party generally convey the feelings of a large part of the population, which recognizes that in the last 30 years the Government has made an effort and achieved great progress in promoting and protecting economic, social and cultural rights. The economic crisis the country is experiencing at this time might unfortunately be a determining factor as to whether the progress can be sustained. The Government's political will to preserve the people's social welfare benefits seems to be steadfast; however, the lack of adequate resources makes it a real possibility that the system will not be able to continue functioning as hoped.

V. INFORMATION RECEIVED FROM INSTITUTIONS AND ORGANIZATIONS BASED IN CUBA IN ACCORDANCE WITH CURRENT LEGISLATION

52. The Special Rapporteur received letters from a series of organizations and institutions inside Cuba commenting on various aspects of the human rights situation in the country and on the content of the report submitted by the Special Rapporteur to the Commission on Human Rights at its forty-ninth session. These letters are summarized below.

53. The Cuban National Union of Jurists stated, with regard to the above-mentioned report, that the entirety of the Universal Declaration on Human Rights had not been taken into account when analysing the non-fulfilment of its provisions in Cuba. Of its 30 articles, only those relating to the right of everyone to freedom of movement and to leave and enter the country; the right to freedom of thought, conscience and religion; the right to freedom of opinion and expression; and the right to freedom of assembly and association, as well as conditions in the prisons, were considered. However, the analysis of human rights in any country must cover them all; otherwise the conclusions reached are incomplete and do not adequately reflect reality. Furthermore, the focus used for analysing fulfilment of the aforesaid rights was applied, ignoring the climate of hostility which the United States has been imposing on Cuba for the last 34 years, the economic embargo being the fundamental reason for the adverse living conditions experienced by the Cuban people, and taking unreliable information sources as valid or sources based on rumours and speculations of the Miami-based media hostile to Cuba, or others which are supposedly based in Cuba but have no legitimacy, credit, membership or prestige.

54. The Special Rapporteur also received a letter from Cuba from the so-called Felix Varela Centre, commenting that the Rapporteur's report made no mention of the historic context within which the Cuban political system emerged and developed and, in particular, the continued United States aggression over 35 years. Cuban intransigence could thus be explained by the people's rejection of the idea of a possible loss of their independence and a restoration of the former status quo. This organization wonders what legitimacy can attach to a policy which, in the name of "restoring" the Cuban people's civil and political rights, decides to deprive them of their economic, social and cultural rights, and whether it would not be more appropriate to free the people from all outside pressure and give them, with full respect for their self-determination, the material and spiritual assistance whereby they can make their own choice. The Special Rapporteur's report, far from contributing to human rights in Cuba, fosters their violation in two ways: overall, because it does not denounce the United States policy of genocide against the Cuban people and, in individual cases, because it encourages rejection and intolerance, thereby making more difficult the climate of tranquillity needed for any exercise of self-criticism.

55. The Cuban Movement for Peace and Sovereignty of the Peoples stated that, as far as civil and political rights are concerned, the Cuban revolution has created a deep-rooted and wide-ranging democracy based on the direct and systematic participation of all the people in making and implementing decisions and in electing leaders at all levels, from the almost 14,000 district representatives, nominated and elected at the grass roots, to the members of the National Assembly of People's Power and the organs of the State. In Cuba, there is no police repression, or paramilitary gangs, or persons imprisoned without having been tried and sentenced by competent courts on the basis of laws promulgated before the offences are committed, and not including any that relate to political ideas or religious beliefs. While torture, assassinations, disappearances, etc. are rife throughout the world, in Cuba not a single case can be cited of an act of that kind having occurred over more than three decades of revolution. Nor is there a single case of discrimination in Cuba on any grounds. Furthermore, one characteristic of the revolutionary process is the effort towards social, economic and cultural development, aimed at attaining that quality of life repeatedly referred to by the General Assembly in its analysis of the right to development. All attempts at development are hampered by the economic, trade and financial embargo imposed on Cuba by the United States for more than 30 years and condemned by the United Nations General Assembly as well as by many Governments and such bodies as the European Parliament, the European Economic Community, the Latin American Group of Eight and the Third Ibero-American Conference of Heads of State and Government.

56. The Federation of Cuban Women also referred to the embargo, noting that it has caused stringent food rationing and a shortage of products for cleaning and personal use that seriously affect the daily lives of Cuban families. The inclusion of such sensitive categories as food and medicines gravely impairs the people's levels of health and social well-being. Another aspect from which to judge the effects of the embargo is the refusal of visas. On many occasions, members of the Federation invited to the country by universities and women's groups and organizations have been refused entry by the United States Government.

57. The Solidarity Organization of the Peoples of Africa, Asia and Latin America sent the Special Rapporteur a letter giving a brief history of the United States economic embargo against Cuba, an embargo which they claim has caused the Cuban people material losses of more than 40 billion dollars, and including references to acts of military aggression, terrorism and other crimes. The letter also referred to the following aspects of the accomplishments of the revolution in Cuba: the right to life is guaranteed, so much so that, if Cuban public health standards were to prevail in Latin America, the lives of 500,000 children a year could be saved. Cuba has more teachers per capita than any other country in the world. Ninety-five per cent of children have been reached by immunization. Diseases such as poliomyelitis, diphtheria, tetanus, whooping cough, etc., have been eradicated and tuberculosis considerably reduced. The social security system guarantees retired persons the right to a decent old age. Illiteracy has been wiped out. The education budget is 20 times larger than in the previous period and the public health budget 50 times larger than before the revolution. In all the history of the revolutionary period in Cuba, there has been on case of torture or forced disappearance. Voting is not compulsory but, nevertheless, 99 per cent of the voters take part in the elections. Women make up 40 per cent of the country's workers, and 60 per cent of medium and higher level technicians. By making Cubans the owners of their houses, evictions have been eliminated in the towns, and by giving the peasants ownership of their lands, dispossession has been eliminated in the country. It took the United States 69 years to raise life expectancy from 60 to 70 years; Cuba, because of the revolution, did it in less than half the time, attaining a life-expectancy of 76 years for Cuban men.

VI. CONCLUSIONS AND RECOMMENDATIONS

58. The Government of Cuba still refuses to accept the Commission on Human Rights decision to continue monitoring human rights conditions in that country and rejects all cooperation with the Special Rapporteur. The Rapporteur once again calls upon the Government of Cuba to modify this stance and to enter into open and direct dialogue on the circumstances and specific cases described and presented in his reports and on any other aspect of the human rights issue. He also calls on the Government to afford him the opportunity to visit the country as is customary for those fulfilling the mandates of the Commission on Human Rights.

59. The Special Rapporteur has, however, recently received communications from organizations and institutions based in Cuba in conformity with the current laws. The basic content of the communications is included in this report (paras. 52-57). The statements of these organizations focus on successes achieved in the social and educational sector but also refer to the United States economic, commercial and financial embargo of Cuba as the fundamental reason for the economic shortfalls and lack of room for political reforms.

60. The present report concentrates foremost on analysing reports received concerning conditions in the areas of civil and political rights and comments both on aspects related to the constitutional and legal framework and on specific cases of violations of justice and the way it operates. The report presents in detail the investigation carried out by the Committee of Experts on the Application of Conventions and Recommendations of the International Labour

Organization (ILO) and the Committee on Freedom of Association, which examine the implementation of different conventions in Cuba. It does so not only for their fundamental relevance but also because they are a way of involving committees with which the Government has maintained a dialogue. In addition, some economic and social development data, based on information supplied to the United Nations by government sources, have been collected: the most recent Human Development Report compiled by the United Nations Development Programme, reports from non-governmental sources and communications from Cuba transmitted by the above-mentioned institutions.

61. Bearing all this in mind, the Special Rapporteur considers that the recommendations presented in his latest report are, unfortunately, still valid and current, and that is the reason for repeating them as follows:

(a) Ratify the principal human rights instruments to which Cuba is not a party, in particular, the Covenant on Civil and Political Rights with its Optional Protocols and the Covenant on Economic, Social and Cultural Rights;

(b) Cease persecuting and punishing citizens for reasons relating to the freedom of peaceful expression and association;

(c) Permit legalization of independent groups, especially those seeking to carry out human rights or trade-union activities, and allow them to act within the law, but independently;

(d) Respect the guaranties of due process, in accordance with the provisions set forth in international covenants;

(e) Ensure greater transparency and guarantees in the prison system, so as to avoid incidents of excessive violence exercised against prisoners. In this connection, it would be a major achievement to renew the agreement with the International Committee of the Red Cross and to allow independent national groups access to prisons;

(f) Review sentences imposed for offences with political connotations and for trying to leave the country illegally;

(g) Expedite and make more transparent the procedure for applying for permission to leave and enter the country, while at the same time avoiding measures of retaliation against the applicants. Family reunification cases should be given priority attention. On this subject, the Special Rapporteur is aware of the need for persons wishing to travel to have visas for entry into other countries. 14/

62. In early September 1993, the bishops of Cuba published a long pastoral letter analysing different aspects of the country's social, economic and political conditions. In addition to the letter, the Special Rapporteur received a document signed by several groups, considered dissident within Cuba, that had joined forces. Both the letter and document make a series of proposals, listed below, which were outlined and presented to the Government. The Special Rapporteur felt it was important to take note of these texts since they are the products of real life experiences and actual day-to-day contact with the realities of Cuban life.

63. The pastoral letter contains the following passage specifically:

> "It seems to us that, concomitant with certain economic changes in the life of the country now beginning to be put into practice, some of the irritating policies should be eradicated because it would generate unquestionable relief and a source of hope in the national soul.
>
> "(1) The exclusive and ubiquitous presence of the official ideology, accompanied by identification of terms that cannot be construed as unambiguous: Fatherland and socialism, State and Government, authority and power, legality and morality, Cuban and revolutionary. This centralist and ideologically all-embracing role of the State generates a feeling of fatigue caused by constant repetition of guidance and instructions;
>
> "(2) Limitations imposed not only on the exercise of certain freedoms, which could be occasionally justifiable, but also on freedom itself. A significant change in this policy would guarantee, inter alia, administration of an independent judiciary which would lead us, based on stable foundations, towards consolidation of a state of law;
>
> "(3) Excessive control by the State Security agencies which at times reaches even into the strictly private lives of individuals. That explains fear, the origin of which is poorly understood but felt as though it were caused by something ungraspable under a veil;
>
> "(4) The large number of persons imprisoned for activities which might be decriminalized or reconsidered as a way to free many of those serving sentences for economic, political or other similar reasons;
>
> "(5) Discrimination for philosophical, political or religious beliefs, the effective elimination of which would encourage participation of all the Cubans, without distinction, in the life of the nation."

64. The dissident organizations group, for its part, speaks of a common platform: amnesty for political prisoners; vindication for the freedom of association, speech, meeting and peaceful demonstration, the press, trade unionism, and the right to enter and leave the country, eradication of all forms of social and political discrimination, safeguarding the national identity, independence and sovereignty. In addition, these organizations, distinguished by their peaceful modus operandi, have demonstrated the willingness to begin a dialogue with the authorities within the law.

65. In the opinion of the Special Rapporteur, the most constructive measures, in an international context, for improving the human rights situation in Cuba should start by eliminating, as soon as possible, the vestiges of the cold war as they relate to Cuba while endeavouring, instead, to promote the country's return to the regional and world system of cooperation and settlement of conflicts. The Rapporteur has the impression that a few timid steps are now

starting to be adopted towards greater confidence between Cuba and its neighbours, particularly the United States. This may have a favourable repercussion in the matter of human rights.

66. Cuba's role in the cold war has vanished along with the economic assistance it received from the former Soviet Union. Fundamental changes in the way the domestic economy operates are more decisive than any other as a way for the nation to provide for its own citizens. To avoid traumatic and costly disruptions, these changes should emerge without delay. The international community must encourage a reform programme designed to improve productivity and efficiency in the economy. Such reforms would naturally assume a greater place for market forces to operate and greater entrepreneurial freedom. The Special Rapporteur considers that incentives or, at the very least, a policy which does not obstruct changes in the current system, rather than pressure or external conditioning, are likely to produce reforms tending towards deregulating not only the economy but also political life. This opinion is not shared by all those concerned about Cuba's future, but neither is it isolated. It was also expressed in a different context by the United Nations General Assembly in resolution 47/19 of 24 November 1992, "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba" which, ir paragraph 2, states that the Assembly urges States with laws and regulations whose extraterritorial effects affect the sovereignty of other States and the legitimate interests of entities or persons under their jurisdiction, as well as the freedom of trade and navigation, to take the necessary measures to set them aside or to cancel their effect as quickly as possible in accordance with their own legal system.

Notes

1/ A/CONF.157/23.

2/ Throughout this report the names of groups and their posts are used as transmitted to the Special Rapporteur by non-governmental sources.

3/ International Labour Organization, 79th session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations (Geneva, 1992), pp. 410-411.

4/ Ibid., 80th session, 1993, pp. 361-362.

5/ Ibid., p. 364.

6/ E/CN.4/1993/39, para. 57.

7/ International Labour Office, 287th report of the Committee on Freedom of Association, 27-29 May 1993 (GB.256/7/12).

8/ For this case, see E/CN.4/1993/39, para. 54 (b).

9/ International Labour Conference, 79th session, 1992, ... p. 409.

10/ Ibid., 80th session, 1993, p. 363.

11/ Ibid., E/CN.4/1993/39, paras. 63-72.

12/ Gaceta Oficial of 25 August 1977.

13/ E/CN.4/1989/46, paras. 124, 128, 130, 143 and 144.

14/ E/CN.4/1993/39, para. 87.

APPENDIX I

Note verbale dated 24 August 1993 from the Special Rapporteur addressed to the Permanent Representative of Cuba to the United Nations Office at Geneva

I have the honour to refer to resolution 1993/63 adopted by the Commission on Human Rights on 10 March 1993 entitled "Situation of human rights in Cuba". As you know, this resolution was endorsed by the Economic and Social Council in its decision 1993/274, thereby confirming the extension of the Special Rapporteur's mandate for another year.

In paragraph 2 of resolution 1993/63, the Commission calls upon the Government of Cuba to permit the Special Rapporteur the opportunity to carry out his mandate in full, in particular by allowing him to visit Cuba, and, in paragraph 7, it requests the Special Rapporteur to maintain direct contact with the Government and the citizens of Cuba. In accordance with these provisions, it is my duty to write to you to request your Government's cooperation in the discharge of my mandate, including an opportunity to visit Cuba, in order to verify the human rights situation firsthand.

(Signed) Carl-Johan GROTH
Special Rapporteur on the Situation
of Human Rights in Cuba

APPENDIX II

Note verbale dated 8 October 1992 from the Permanent Representative of Cuba to the United Nations Office at Geneva addressed to the Special Rapporteur

I have received your letter of 7 September 1992, on which, after a careful reading and upon instructions from my Government, I wish to make the following comments:

For more than 30 years, our people has had to wage a heroic struggle against the attempts of successive United States administrations to destroy us by means of a dirty war, plans to assassinate our supreme political leaders, threats of aggression, mercenary invasions and the most brutal acts of terrorism, from sabotaging our national economy to blowing up a CUBANA commercial aircraft in mid-air with 73 passengers on board.

Another key element of this policy is the economic embargo which the United States has unilaterally imposed against Cuba throughout this same period, and which is now being stepped up and expanded with the aim of starving an entire people.

This criminal policy is still being applied against my people, with the ultimate aim of overthrowing by all possible means the political, economic and social system chosen by the Cuban people in exercise of their right to self-determination. Despite the tremendous challenge that the evil, continued hostility of the mightiest power on the planet has constituted for a small, poor country, Cuba has stood its ground. Not only has it managed to resist: it can also point with justifiable satisfaction and pride to tangible achievements and evidence as regards its economic and social development and the strengthening of its democracy with the full and effective participation of its people.

The campaign unleashed by the United States in recent years on the so-called "situation of human rights in Cuba", in which it is attempting to involve and drag in the United Nations, is part of the same policy of hostility and harassment.

Resolution 1992/61 and similar earlier resolutions adopted by the Commission on Human Rights are the illegitimate fruit of the United States determined efforts to intervene in our domestic affairs, taking advantage of the situation of a politically and militarily polarized world.

In this context, the Cuban Government has expressed its determination not to accept the selective, discriminatory treatment which the United States is seeking to impose on it. This is an immutable position of principle consistent with the Charter of the United Nations and international law.

The fact that the country which supported for decades and, yes, maintained, oppressive regimes that violated human rights in many parts of the world is attempting to set itself up as our judge and accuser is, to say the least, an immoral paradox. This is the same country which, throughout our history, has continued to add to the long list of aggressions, invasions and interventions it

has committed against our peoples, whom it exploited yesterday and is extorting today while at the same time attempting to force us into dependence and subordination. These are our accusers.

For these reasons - and no others - we emphatically reject resolution 1992/61 and, accordingly, we cannot cooperate in its implementation in any way.

You must understand - and our own experience shows - that it will not lead anywhere, for what is at issue here is not a genuine concern for human rights, but rather a foreign power's intention to dictate to our country which model of democracy or form of Government to adopt.

At the same time, Cuba has stated - and will state again - that it is ready and willing to continue cooperating with the United Nations in the field of human rights where mechanisms are applied equally to all Member States, and in accordance with the contractual obligations derived from those international treaties and agreements to which Cuba is a party. The files of the Centre for Human Rights contain very useful documents which prove the extent of our cooperation.

(Signed) José PEREZ NOYOA
Ambassador

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Agenda item 99

IMPLEMENTATION OF DECISIONS AND RECOMMENDATIONS OF THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT

Intergovernmental Negotiating Committee for a Framework Convention on Climate Change

Note by the Secretary-General

1. The eighth session of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change was held at Geneva from 16 to 27 August 1993. At that session, the Committee made a recommendation to be brought before the General Assembly at its current session.

2. At its 4th meeting, on 27 August, the Committee recommended that the Assembly:

(a) Accept the invitation of the Government of Germany to host in Berlin the first session of the Conference of Parties to the United Nations Framework Convention on Climate Change;

(b) Approve the inclusion of the Conference in the calendar of conferences and meetings for 1994-1995;

(c) Decide that the session should be held from 28 March to 7 April 1995, in accordance with the relevant provisions of the Convention regarding its entry into force and regarding the convening of the first session of the Conference of Parties.

3. The Committee also approved the following schedule of its future sessions, which have been included in the draft calendar of conferences and meetings for 1994-1995:

(a) Ninth session, to be held at Geneva from 7 to 18 February 1994;

(b) Tenth session, to be held at Geneva from 22 to 31 August 1994, including Saturday, 27 August;

(c) Eleventh session, to be held in New York from 6 to 17 February 1995.

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